No. _____

01
E-FILED
2/11/2019 11:22 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Illinois Attorney General, and JOSEPH H. McMAHON, Special Prosecutor and State's Attorney of Kane County, Illinois, | ) | Original Petition for Writ of Mandamus/Prohibition |
| Petitioners, | ) | |
| v. | ) | Underlying Case No. 17 CR 4286 Circuit Court of Cook County |
| THE HONORABLE VINCENT M. GAUGHAN, Circuit Judge of the Circuit Court of Cook County, and JASON VAN DYKE, | ) | The Honorable Vincent M. Gaughan, Judge Presiding. |
| Respondents. | ) | |

**MOTION FOR LEAVE TO FILE**
**PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

Petitioners seek leave to file a petition for mandamus or prohibition pursuant to Supreme Court Rule 381 and article VI, § 4(a) of the Illinois Constitution.

1. On October 5, 2018, a Cook County jury found respondent Jason Van Dyke guilty of sixteen counts of aggravated battery with a firearm and one count of second degree murder. SR165-70.[1]

[1] "SR_" refers to the supporting record filed with this motion and proposed petition.

2. On January 18, 2019, respondent Judge Vincent Gaughan sentenced Van Dyke to eighty-one months in prison on the second degree murder conviction alone. SR245-47, 253.

3. Van Dyke's sentence is unauthorized. In sentencing Van Dyke, Judge Gaughan made two legal errors. First, contrary to clearly established law, Judge Gaughan sentenced Van Dyke only on the second degree murder conviction, concluding that second degree murder was the more serious offense "in this particular case." SR245. But *People v. Lee*, 213 Ill. 2d 218, 229-30 (2004), holds that under the one-act, one-crime doctrine, a defendant convicted of both aggravated battery with a firearm and second degree murder must be sentenced only for aggravated battery with a firearm because it is, in every case, the more serious offense.

4. Second, Judge Gaughan stated that, although he was not entering sentences on the aggravated battery with a firearm convictions, were he to do so, "all those shots were done within a range of anyplace from 14 to so many seconds, but less than 30 seconds, at the most, so I consider that one act, so they would all merge." SR245. But *People v. Crespo*, 203 Ill. 2d 335, 344-45 (2001), holds that a separate sentence on each conviction is required when the prosecution, through its charging and argument, has made clear its intention to treat the defendant's conduct — there, the infliction of three stab wounds — as multiple acts. Here, the People made clear that Van Dyke's sixteen shots were distinct acts supporting multiple

convictions and sentences both by charging them as separate acts and in their closing argument. SR9-24, 50-51.

5. Thus, under *Lee* and *Crespo*, Judge Gaughan was required to impose sentence not on the second degree murder conviction, but instead on all sixteen aggravated battery convictions.

6. "*Mandamus* is an appropriate remedy to compel compliance with mandatory legal standards," including compelling the undoing of an act. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93 (2009). Prohibition is appropriate to prevent a judicial act that is beyond the judge's legitimate authority. *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 13. Because Judge Gaughan's sentencing order is unauthorized, a mandamus action appropriately asks this Court to order him to correct it to conform to Illinois law. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 21. Alternatively, because Judge Gaughan lacked authority to sentence Van Dyke for the less serious offense of second degree murder, prohibition is appropriate as well. *See Howard*, 2016 IL 120729, ¶ 13.

7. For these reasons and those set forth in the proposed petition for a writ of mandamus or prohibition, petitioners respectfully request that this Court issue an order directing Judge Gaughan to (1) vacate his sentencing order, (2) impose sentence on each of the sixteen aggravated battery with a firearm convictions, and (3) determine which of the aggravated battery with a firearm convictions involved "severe bodily injury" warranting consecutive sentences, *see* 730 ILCS 5/5-8-4(d)(1).

Respectfully submitted,

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Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

By: /s/ Leah M. Bendik
LEAH M. BENDIK
Assistant Attorney General

/s/ Brian McLeish
BRIAN McLEISH
Assistant Attorney General

/s/Michelle Katz
MICHELLE KATZ
Assistant State's Attorney

## VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Leah M. Bendik
Assistant Attorney General

No. _____

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Illinois Attorney General, and JOSEPH H. McMAHON, Special Prosecutor and State's Attorney of Kane County, Illinois, | ) | Original Petition for Writ of Mandamus/Prohibition |
| Petitioners, | ) | |
| v. | ) | Underlying Case No. 17 CR 4286 |
| THE HONORABLE VINCENT M. GAUGHAN, Circuit Judge of the Circuit Court of Cook County, and JASON VAN DYKE, | ) | Circuit Court of Cook County |
| Respondents. | ) | The Honorable Vincent M. Gaughan, Judge Presiding. |

**ORDER**

This matter coming to be heard on the motion of petitioners for leave to file petition for mandamus or prohibition, the motion is hereby ALLOWED / DENIED.

DATED: _____ ENTER: _____
JUSTICE

LEAH M. BENDIK
Assistant Attorney General
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(312) 814-5029
Eserve.criminalappeals@atg.state.il.us
*Counsel for Petitioners*

## PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 11, 2019, the foregoing **Motion For Leave to File Petition for a Writ of Mandamus or Prohibition**, which complies with the proposed-order requirement of Supreme Court Rule 361(b)(2), was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

Daniel Herbert
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206 South Jefferson, Suite 100
Chicago, Illinois 60661
dan.herbert@danherbertlaw.com

The Honorable Vincent Gaughan
Judge, Circuit Court of Cook County
2600 South California Avenue
Chicago, Illinois 60608
Amber.Hunt@cookcountyil.gov

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/s/ Leah M. Bendik
*Counsel for Petitioners*

No. _____

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Illinois Attorney General, and JOSEPH H. McMAHON, Special Prosecutor and State's Attorney of Kane County, Illinois,<br><br>Petitioners,<br><br>v.<br><br>THE HONORABLE VINCENT M. GAUGHAN, Circuit Judge of the Circuit Court of Cook County, and JASON VAN DYKE,<br><br>Respondents. | ) | Original Petition for Writ of Mandamus/Prohibition<br><br>Underlying Case No. 17 CR 4286 Circuit Court of Cook County<br><br>The Honorable Vincent M. Gaughan, Judge Presiding. |

**PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

Petitioners seek a writ of mandamus or prohibition against respondent, the Honorable Vincent M. Gaughan, pursuant to Supreme Court Rule 381 and article VI, § 4(a) of the Illinois Constitution.

**Background**

1. In March 2017, respondent Jason Van Dyke was charged by indictment with first degree murder and sixteen counts of aggravated battery with a firearm for killing Laquan McDonald on October 20, 2014. SR1-24.[1]

[1] "SR_" refers to the supporting record filed with this motion and proposed petition.

2. On October 5, 2018, a Cook County jury found Van Dyke guilty of second degree murder and sixteen counts of aggravated battery with a firearm. SR165-70.

3. Van Dyke's convictions of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1)) are Class X (720 ILCS 5/12-3.05(h)), non-probationable felonies (730 ILCS 5/5-4.5-25(d)), requiring a sentence between six and thirty years (730 ILCS 5/5-4.5-25(a)). SR9-24. A defendant convicted of such an offense must serve at least 85% of the sentence imposed. 730 ILCS 5/3-6-3(a)(2)(ii) & (a)(4.7)(i). Van Dyke's second degree murder conviction is a Class 1 (720 ILCS 5/9-2(d)), probationable felony (730 ILCS 5/5-4.5-30(d)), requiring a sentence between four and twenty years (730 ILCS 5/5-4.5-30(a)). SR253. A defendant convicted of such an offense may serve as little as 50% of the sentence imposed. 730 ILCS 5/3-6-3(a)(2.1).

4. The sixteen aggravated battery with a firearm counts charged each separate shot that Van Dyke fired. SR9-24. At trial, the People similarly argued that each shot supported a separate conviction for aggravated battery with a firearm. SR50-51. Dr. Ponni Arunkumar testified at trial that each shot struck the victim, caused blood loss, and contributed to the victim's death, which resulted from "multiple gunshot wounds." SR29-32.

5. And in the sentencing memorandum, the People argued that Judge Gaughan was required to sentence Van Dyke on each of the sixteen aggravated battery with a firearm convictions, citing *People v. Lee*, 213 Ill. 2d

218, 229-30 (2004), and *People v. Crespo*, 203 Ill. 2d 335, 344-45 (2001). SR175-80.

6. Judge Gaughan acknowledged that he was required to sentence Van Dyke on the "more serious" offense. SR242-43. But in deciding which offense was more serious, he relied on the dissenting opinion in *Lee*. SR245 ("[A]pplying Justice Thomas's reasoning, I find that the lesser offense in this particular case . . . is the aggravated battery with a firearm."); SR242 ("Justice Thomas in that case out of the Supreme Court framed the issue which I think is important here."); SR243 ("But looking at that, and then Justice Thomas's analysis of the penalties . . ."). Judge Gaughan also stated that were he to sentence Van Dyke on the aggravated battery with a firearm convictions, he would merge all sixteen convictions under the one-act, one-crime doctrine because the shots were fired close in time. SR245.

7. Ultimately, Judge Gaughan sentenced Van Dyke solely on the second degree murder conviction. SR245-47, 253. According to the Cook County Circuit Clerk's Office, Van Dyke filed a notice of appeal on February 8, 2019.[2]

[2] Van Dyke's direct appeal has no effect on this mandamus action. *See*, *e.g.*, *People ex rel. Daley v. Strayhorn*, 119 Ill. 2d 331, 333-37 (1988) (notwithstanding pending direct appeal, mandamus was proper to require sentencing judge to follow mandatory statutory sentencing guidelines). The direct appeal will not address the sentencing errors raised in this mandamus, SR188-99, and the State may not raise the errors through a cross-appeal, *People v. Castleberry*, 2015 IL 116916, ¶¶ 21-23.

## Argument

This Court has original jurisdiction in mandamus and prohibition actions. Ill. Const. 1970, art. VI, § 4(a). "Mandamus is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved." *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶¶ 12-13 (citing *People ex rel. Birkett v. Konetski,* 233 Ill. 2d 185, 192-93 (2009)). "Although mandamus generally provides affirmative rather than prohibitory relief, the writ can be used to compel the undoing of an act," *Howard*, 2016 IL 120729, ¶ 12 (citation omitted), and "to compel compliance with mandatory legal standards," *Konetski*, 233 Ill. 2d at 192-93. A writ of mandamus will be awarded if the petitioner establishes a clear right to the relief sought, a clear duty of the public official to act, and clear authority in the public official to comply with the writ. *Howard*, 2016 IL 120729, ¶ 12.

A writ of prohibition may be issued to "prevent a judge from acting where he has no jurisdiction to act or to prevent a judicial act that is beyond the scope of a judge's legitimate jurisdictional authority." *Id.* ¶ 13 (citations, quotation marks, and brackets omitted). For a writ of prohibition to issue, the action to be prohibited must be judicial or quasi-judicial in nature, the jurisdiction of the tribunal against which the writ issues must be inferior to that of the issuing court, the action to be prohibited must be outside the tribunal's jurisdiction or, if within its jurisdiction, beyond its legitimate authority, and the petitioner must be without any other adequate remedy.

*People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 449-50 (2007); *Zaabel v. Konetski*, 209 Ill. 2d 127, 132 (2004).

## I. This Court Should Order Judge Gaughan to Sentence Van Dyke in Accordance with *People v. Lee*.

Here, mandamus or prohibition is warranted because (1) under *Lee*, Judge Gaughan was required to impose sentence on the aggravated battery with a firearm convictions instead of the second degree murder conviction; and (2) no other adequate remedy is available because petitioners may not appeal Judge Gaughan's sentencing order. *See Castleberry*, 2015 IL 116961, ¶ 27 ("The remedy of mandamus … permits the State to challenge criminal sentencing orders where it is alleged that the circuit court violated a mandatory sentencing requirement, but precludes the State from challenging ordinary, discretionary sentencing decisions.").

Where, as here, a defendant is found guilty of aggravated battery with a firearm and second degree murder based on the same conduct, the trial court must sentence the defendant only on the "more serious" offense. *Lee*, 213 Ill. 2d at 226-27. The question of which offense is "more serious" is one for the General Assembly. *Id.* at 230. Because the General Assembly assigned a higher maximum sentence, higher minimum sentence, and greater felony classification to aggravated battery with a firearm, it is always a more serious offense than second degree murder. *Id.* at 228-30 (vacating sentence on second degree murder because aggravated battery with a firearm is the more serious offense).

Despite this Court's clear holding in *Lee*, Judge Gaughan sentenced Van Dyke on second degree murder and declined to impose sentence on the sixteen aggravated battery counts. Relying on the dissent of a lone justice in *Lee*, Judge Gaughan stated that he would decide which was the more serious offense based on the facts of the particular case. SR242 ("Justice Thomas in that case out of the Supreme Court framed the issue which I think is important here"); SR243 ("But looking at that, and then Justice Thomas's analysis of the penalties . . ."); SR245 ("Again, applying Justice Thomas's reasoning, I find that the lesser offense in this particular case . . . is the aggravated battery with a firearm.").

*Lee* remains good law. *See People v. Johnson*, 237 Ill. 2d 81, 98 (2010) (applying *Lee* and reiterating that "[t]he determinative question in each case is the intent of the legislature"). And in the fifteen years following *Lee*, the General Assembly has amended neither the felony classifications nor the sentencing ranges for either of these two offenses, further demonstrating that *Lee*'s outcome is consistent with legislative intent. *See*, *e.g.*, *People v. Espinoza*, 2015 IL 118218, ¶ 27 ("When the legislature chooses not to amend a statute following a judicial construction, it will be presumed that the legislature has acquiesced in the court's statement of the legislative intent."). Because *Lee* required Judge Gaughan to sentence Van Dyke on the aggravated battery with a firearm convictions, the sentence for second degree

murder was unauthorized. *See*, *e.g.*, *Blumenthal v. Brewer*, 2016 IL 118781, ¶¶ 28-30 (lower courts are not free to disregard decisions of this Court).

## II. This Court Should Order Judge Gaughan to Sentence Van Dyke in Accordance with *People v. Crespo*.

Where, as here, the People charge and prosecute a defendant's conduct as multiple acts and obtain multiple convictions, the sentencing court must impose a separate sentence on each conviction. *People v. Crespo*, 203 Ill. 2d 335, 344-45 (2001) (multiple convictions and sentences would have been appropriate had State argued that each stab wound was alone sufficient to sustain charge); *see also People v. Dixon*, 91 Ill. 2d 346, 356 (1982) ("separate blows, even though closely related, were not one physical act" and therefore supported multiple convictions and sentences).

While issuing an unauthorized sentence in violation of *Lee*, Judge Gaughan also stated that were he to sentence Van Dyke for the aggravated battery with a firearm, he would impose a single sentence on all sixteen convictions, reasoning that because the sixteen shots were fired in less than thirty seconds, they constituted a single act. SR245 ("all those shots were done within a range of anyplace from 14 to so many seconds, but less than 30 seconds, at the most, so I consider that one act, so they would all merge.").

Because the People separately charged each shot and the jury convicted on each count, separate convictions and sentences are required. Even where multiple acts by a defendant are committed close in time, they can sustain multiple convictions under *Crespo* if the People charge and argue each act as a

separate offense. 203 Ill. at 342 ("[S]eparate blows, although closely related, [may] constitute[ ] separate acts which [can] properly support multiple convictions."). The People here did just that. SR9-24, 51; *see also* SR 165-70. Accordingly, Van Dyke should be sentenced on each of the sixteen separate aggravated battery with a firearm convictions in accordance with *Crespo*.

Only offenses that caused "severe bodily injury" warrant consecutive sentences, 730 ILCS 5/5-8-4(d)(1), and not every gunshot wound constitutes severe bodily injury, *see*, *e.g.*, *People v. Williams*, 335 Ill. App. 3d 596, 601 (1st Dist. 2002) (remanding for factfinding on severe bodily injury where victims suffered "through wounds" in their legs). Whether an injury is "severe" is a question of fact for the sentencing judge. *See People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Thus, in imposing sentence for the sixteen aggravated battery with a firearm convictions, Judge Gaughan should determine which ones involved "severe bodily injury" warranting consecutive sentences.[3]

## Conclusion

Petitioners respectfully request that this Court issue a writ of mandamus or prohibition directing Judge Gaughan to (1) vacate Van Dyke's eighty-one-month sentence for second degree murder, (2) impose sentence on

[3] The People's sentencing memorandum argued that at least two of Van Dyke's shots caused severe bodily injury warranting mandatory consecutive sentences on those counts. SR182. Under those circumstances, Van Dyke would face a minimum sentence of eighteen years: six years each for the two consecutive severe-bodily-injury counts, plus an additional six years for the remaining fourteen counts. *Id.*

each of the sixteen counts of aggravated battery with a firearm, in conformance with *Lee*, *Crespo*, and the applicable sentencing provisions, and (3) determine which of the aggravated battery with a firearm convictions involved "severe bodily injury" warranting consecutive sentences, *see* 730 ILCS 5/5-8-4(d)(1).

Respectfully submitted,

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MICHAEL M. GLICK
Criminal Appeals Division Chief

By: /s/ Leah M. Bendik
LEAH M. BENDIK
Assistant Attorney General

/s/ Brian McLeish
BRIAN McLEISH
Assistant Attorney General

/s/Michelle Katz
MICHELLE KATZ
Assistant State's Attorney

**VERIFICATION BY CERTIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Leah M. Bendik
LEAH M. BENDIK
Assistant Attorney General

**PROOF OF FILING AND SERVICE**

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 11, 2019, the foregoing **Petition for Writ of Mandamus or Prohibition** and **Supporting Record**, were electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

Daniel Herbert
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206 South Jefferson, Suite 100
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The Honorable Vincent Gaughan
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/s/ Leah M. Bendik
*Counsel for Petitioners*

No. _____

IN THE
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| PEOPLE OF THE STATE OF ILLINOIS, ex rel. KWAME RAOUL, Illinois Attorney General, and JOSEPH H. McMAHON, Special Prosecutor and State's Attorney of Kane County, Illinois, | ) | Original Petition for Writ of Mandamus/Prohibition |
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| Respondents. | ) | The Honorable Vincent M. Gaughan, Judge Presiding. |

**SUPPORTING RECORD**

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Eserve.criminalappeals@atg.state.il.us
*Counsel for Petitioners*

## VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies on information and belief that the documents in the Supporting Record are true and correct copies of those filed in *People v. Van Dyke*, No. 17 CR 04286 (Cir. Ct. Cook Cty.).

/s/ Leah M. Bendik
LEAH M. BENDIK

## INDEX

** INFORMATION INDICTMENT RETURN SHEET**

| CASE NO. | IR | DEFENDANT | NO. | ARRAIGNMENT DATE |
|---|---|---|---|---|
| 17CR-4286 | 2306293 | Jason Van Dyke | 001 | 03/23/2017 |

GJ- 252

FBI-XJ5E48PA3 SEX:Male RACE:White DOB:03/31/1978

ISB-45954410 Add:206 S. Jefferson St, Suite 100, Chicago, IL 60661

Municipal-15-1127823

CB-19227223 Arrest Agy:COOK COUNTY STATE'S ATTORNEY

RD/AR-15-IB110156 Arrest Unit:

Arrest Date:11/24/2015

DL State: *** DL#: ***

Hgt:602 Wgt:210

Hair:Brown Eyes:Blue

True Bill 03/16/2017
ASA: Dan Weiler

001 MURDER/INTENT TO KILL/INJURE WITH FIREARM
720 ILCS 5/9-1(a)(1)
0735000 Class: M
002 MURDER/STRONG PROB KILL/INJURE FIREARM
720 ILCS 5/9-1(a)(2)
0735100 Class: M
003 MURDER/INTENT TO KILL/INJURE DISCHARGE FIREARM
720 ILCS 5/9-1(a)(1)
0735000 Class: M
004 MURDER/STRONG PROB KILL/INJURE DISCHARGE FIREARM
720 ILCS 5/9-1(a)(2)
0735100 Class: M
005 MURDER/INTENT TO KILL/INJURE DISCHARGE FIREARM PROXIMATELY
720 ILCS 5/9-1(a)(1)
0735000 Class: M
006 MURDER/STRONG PROB KILL/INJURE DISCHARGE FIREARM PROXIMATELY
720 ILCS 5/9-1(a)(2)
0735100 Class: M
007 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
008 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
009 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0010 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X

0011 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0012 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0013 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0014 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0015 AGG BATTERY/DISCHARGE FIREARM
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0016114 Class: X
0016 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0017 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0018 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0019 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0020 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0021 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0022 AGG BATTERY/DISCHARGE FIREARM
720 ILCS 5/12-3.05(e)(1)
0016114 Class: X
0023 OFFL MISCONDUCT/FORBIDDEN ACT
720 ILCS 5/33-3(b)
1430100 Class: 3

Re-Indicted From Case #: 15CR-20622

BF

SR2

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

The MARCH 2017 Grand Jury of the
Circuit Court of Cook County,

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, INTENTIONALLY OR KNOWINGLY SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 1
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735000

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM, KNOWING THAT SUCH ACT CREATED A STRONG PROBABILITY OF DEATH OR GREAT BODILY HARM TO LAQUAN MCDONALD,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(2) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 2
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735100

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, INTENTIONALLY OR KNOWINGLY SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM AND DURING THE COMMISSION OF THE OFFENSE HE PERSONALLY DISCHARGED A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 3
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735000

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM, KNOWING THAT SUCH ACT CREATED A STRONG PROBABILITY OF DEATH OR GREAT BODILY HARM TO LAQUAN MCDONALD AND DURING THE COMMISSION OF THE OFFENSE HE PERSONALLY DISCHARGED A FIREARM,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(2) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 4
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735100

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, INTENTIONALLY OR KNOWINGLY SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM AND DURING THE COMMISSION OF THE OFFENSE HE PERSONALLY DISCHARGED A FIREARM THAT PROXIMATELY CAUSED DEATH,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 5
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735000

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, SHOT AND KILLED LAQUAN MCDONALD WHILE ARMED WITH A FIREARM, KNOWING THAT SUCH ACT CREATED A STRONG PROBABILITY OF DEATH OR GREAT BODILY HARM TO LAQUAN MCDONALD AND DURING THE COMMISSION OF THE OFFENSE HE PERSONALLY DISCHARGED A FIREARM THAT PROXIMATELY CAUSED DEATH,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 9-1(a)(2) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 6
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0735100

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 7
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A SECOND TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 8
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A THIRD TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 9
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A FOURTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 10
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A FIFTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 11
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A SIXTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 12
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A SEVENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 13
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD AN EIGHTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 14
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A NINTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 15
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A TENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 16
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD AN ELEVENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 17
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A TWELFTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 18
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A THIRTEENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 19
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A FOURTEENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 20
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A FIFTEENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 21
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, IN VIOLATION OF ILLINOIS COMPILED STATUTES CHAPTER 720, ACT 5, SECTION 12-3, WITHOUT LEGAL JUSTIFICATION, KNOWINGLY AND BY MEANS OF DISCHARGING A FIREARM CAUSED AN INJURY TO LAQUAN MCDONALD, IN THAT SAID DEFENDANT SHOT LAQUAN MCDONALD A SIXTEENTH TIME WITH A HANDGUN,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-3.05(e)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 22
CASE NUMBER 17CR-4286
CHARGE ID CODE: 0016114

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about October 20, 2014 at and within the County of Cook

Jason Van Dyke

committed the offense of OFFICIAL MISCONDUCT

in that HE, BEING A PUBLIC OFFICER OR EMPLOYEE OR SPECIAL GOVERNMENT AGENT WHILE IN HIS OFFICIAL CAPACITY KNOWINGLY COMMITTED AN ACT WHICH HE KNEW THAT HE WAS FORBIDDEN BY LAW TO PERFORM, TO WIT: HE SHOT AND KILLED LAQUAN MCDONALD WITHOUT LAWFUL JUSTIFICATION,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 33-3(B) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

COUNT NUMBER 23
CASE NUMBER 17CR-4286
CHARGE ID CODE: 1430100

Reindicted from 15CR-20622

# FELONY MINUTE SHEET
## FORM 101

MAR a52

**ASSISTANT STATE'S ATTORNEY:**
Enter each continuance here. In cases of multiple defendants indicate which defendant, if any did not join in the continuance. Also Indicate dates of all demands for trial, and by whom demands were made.

17CR-4286 Atr 3.23.17

COURT _____

| IR NUMBER | DEFENDANT(S) | AGE | DATE OF ARREST | CHARGE |
|---|---|---|---|---|
| 2306293 | Van Dyke, Jason | | 11/24/15 | First degree murder |
| | | | | Official misconduct |
| | | | | Aggravated battery |
| | | | | |
| | | | | |

Date of Offense: 10/20/14 Time: 10:00PM Place: 4120 S. Pulaski Ave

The Facts briefly stated are as follows:

On above date, time, and location Jason Van Dyke shot and killed LaQuan McDonald

**WITNESS:** Spell out first and last names, first name list also furnish address & phone number of each witness

PROSECUTING WITNESS: SA Jeffrey Guagliardo FBI

BOND $_____ ASST. STATE'S ATTY Dan Weiler, Joe Cullen R.D. # 3-16-17

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

| | |
|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, | A.M. SESSION ONLY |
| vs. | No. 17 CR 04286 (01) |
| JASON VAN DYKE, Defendant. | |

REPORT OF PROCEEDINGS had before the HONORABLE VINCENT M. GAUGHAN, Judge of said Court, on the 19th day of September, A.D., 2018.

APPEARANCES:

HON. JOSEPH McMAHON,
State's Attorney of Kane County,
Court-Appointed Special Prosecutor, and
MR. JOSEPH CULLEN,
MS. JODY GLEASON,
MS. MARILYN HITE ROSS,
MR. DANIEL WEILER,
MS. MICHELLE KATZ,
Assistant Special Prosecutors,
On behalf of the People;

MR. DANIEL HERBERT,
MR. RANDY RUECKERT,
MS. TAMMY WENDT,
MS. ELIZABETH FLEMING,
Attorneys at Law,
On behalf of the Defendant.

KRISTEN M. PARRILLI, CSR, RPR
Official Court Reporter
Criminal Division
CSR: #084-004723

I N D E X

Case Name: People vs. Jason Van Dyke

Case No: 17 CR 04286 (01)

Pages: 1 through 185

Court Reporter: Kristen M. Parrilli, CSR, RPR

Reporter Certificate: Page 185



****Sidebar at page 46****

Q. -- for outside testing?

A. Yes.

Q. What are the effects of PCP at 56 nanograms per milliliter in a person's system?

MR. HERBERT: Objection, Judge.

THE COURT: She's a medical doctor. Overruled.

THE WITNESS: The physiological effects from PCP at a level of 56 nanograms per ML would be referred to -- would be classified as effects from a low dose of phencyclidine, and these effects include visual disturbances, drowsiness, agitation, hallucinations, aggressiveness, increased pulse rate and blood pressure, bronchospasm, increased respiratory rate, and hypothermia. And this is documented in the toxicology report.

Q. Doctor, was Laquan McDonald alive for each and every gunshot?

MR. HERBERT: Objection, Judge.

THE COURT: I'll allow you wide latitude on cross-examination. Overruled.

THE WITNESS: Yes.

BY MR. McMAHON:

Q. Did each and every gunshot wound cause Laquan McDonald to lose blood?

A. Yes.

Q. Doctor, how much blood by volume does the human body hold?

A. The human body has around five liters of blood.

Q. And what happens to a person when -- when he loses blood?

A. When they lose about -- when one loses about 20 to 25 percent of the blood volume, which is a little more than a liter of blood, one can go into shock, which is hemorrhagic shock.

Q. And as the person loses more blood, so more than 20 to 25 percent, is there an impact of losing a greater amount of blood?

A. Yes.

Q. What is that?

A. At a certain stage, one cannot be resuscitated or revived and death is a consequence.

Q. And what is that higher level? What is that stage?

MR. HERBERT: Judge, I'm going to object. This is all outside the scope of --

THE COURT: It's noted. Thank you.

MR. HERBERT: Thank you.

THE COURT: Objection overruled.

THE WITNESS: When a person loses about 60 percent of their blood volume, usually death is the result.

BY MR. McMAHON:

Q. You testified earlier that each of the 16 gunshot wounds caused blood loss, correct?

A. Correct.

Q. And did each and every gunshot wound and the blood loss from gunshot wound, did that accelerate the death of Laquan McDonald?

A. Yes.

Q. Did each and every gunshot wound contribute to the death of Laquan McDonald?

A. Yes.

Q. Doctor, based on your years of experience, your training, your education, the thousands of autopsies that you have both personally performed and the thousands more that you have reviewed and supervised, all of the medical information, the autopsy reports, the photographs, the toxicology reports, the videos, you determined the cause of death to Laquan McDonald?

A. Yes.

Q. What is it?

A. The cause of death is multiple gunshot wounds.

Q. Doctor, what was the manner of death to Laquan McDonald?

A. The manner of death is homicide.

MR. McMAHON: If I can have a moment, Judge?

THE COURT: Absolutely.

MR. McMAHON: Thank you, Judge. That's all I have.

THE COURT: Doctor, you can step down.

Doctor, you're still under oath. You can't talk to anybody about your testimony. You're going to be cross-examined later. We're going to break for lunch at this time.

THE SHERIFF: All rise for the jury.

(Whereupon the following proceedings were had in open court outside the presence of the jury:)

THE COURT: We're going to recess for lunch. 2:15 on that clock.

MR. HERBERT: Judge, if I can make a real -- just real quick. I'm going to make a motion to strike the portion of the testimony that was not disclosed.

THE COURT: We'll do that after the break.

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, Kristen M. Parrilli, an Official Court Reporter for the Circuit Court of Cook County, Illinois, Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into computer-aided transcription, which I hereby certify to be a true and accurate transcript of the proceedings had before the HONORABLE VINCENT M. GAUGHAN, Judge of said court.

KRISTEN M. PARRILLI, CSR, RPR
CSR No. 084-004723
Official Court Reporter
Circuit Court of Cook County
County Department
Criminal Division

Dated this 20th day
of September, A.D., 2018.

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs. ) No. 17 CR 04286 (01)
JASON VAN DYKE,
Defendant.

REPORT OF PROCEEDINGS had before the HONORABLE VINCENT M. GAUGHAN, Judge of said Court, on the 4th day of October, A.D., 2018.

APPEARANCES:
HON. JOSEPH McMAHON,
State's Attorney of Kane County,
Court-Appointed Special Prosecutor, and
MR. JOSEPH CULLEN,
MS. JODY GLEASON,
MS. MARILYN HITE ROSS,
MR. DANIEL WEILER,
MS. MICHELLE KATZ,
Assistant Special Prosecutors,
On behalf of the People;

MR. DANIEL HERBERT,
MR. RANDY RUECKERT,
MS. TAMMY WENDT,
MS. ELIZABETH FLEMING,
Attorneys at Law,
On behalf of the Defendant.

PAUL O'CONNOR, CSR
KRISTEN M. PARRILLI, CSR, RPR
Official Court Reporter
Criminal Division
CSR: #084-004723

I N D E X

Case Name: People vs. Jason Van Dyke

Case No: 17 CR 04286

Reporter Certificate: Page 126

(Whereupon the following proceedings were had in open court outside the presence of the jury:)

THE CLERK: Jason Van Dyke.

THE COURT: All right. Will the attorneys approach, please.

All right. Will the attorneys please state their names.

MR. McMAHON: Good morning, Judge. Joe McMahon for the People of the State of Illinois.

MS. GLEASON: Jody Gleason on behalf of the State.

MR. CULLEN: Joe Cullen on behalf of the State.

MS. HITE ROSS: Marilyn Hite Ross for the State.

MR. WEILER: Dan Weiler for the State.

MR. HERBERT: Good morning. Dan Herbert on behalf of Jason Van Dyke.

MR. RUECKERT: Randy Rueckert on behalf of Jason Van Dyke.

MS. FLEMING: Elizabeth Fleming on behalf of Jason Van Dyke.

MS. WENDT: Tammy Wendt for Mr. Van Dyke.

THE COURT: All right. At this time the jury is on their way here. Again, some just housekeeping. Now we have -- Mr. McMahon, you brought a computer that's

stripped down with no other date on it?

MR. McMAHON: Yes, we did, Judge.

THE COURT: Okay.

MR. McMAHON: Yes.

THE COURT: So what will be going back to the jury? Defense, you have yours on there, too?

MR. HERBERT: Our exhibits? I don't know. I didn't see it yet.

MS. FLEMING: The Defense has a USB drive with the PowerPoint exhibits that were admitted into evidence that we can provide to the State and then we can --

THE COURT: Have you done that already?

MS. FLEMING: We have not done that yet.

THE COURT: When were you going to?

MS. FLEMING: We can do it right now.

THE COURT: Outstanding. All right. So we're in recess. We're waiting on the jury. Then once they get settled in and everything else, we're going to start. Everybody knows they were supposed to be here 15 minutes before we started and at the time that was 9:00 o'clock, so we're good as far as time, so ...

MR. HERBERT: Judge, just one question. Are you going to take -- Are you going to let the jurors go back after the State's initial close? Because we have

to set up a computer. I don't really care how you want to do it, Judge, but we might have a couple minutes lag time.

THE COURT: Well, I want you to know -- Here, how about this: It's ten after 9:00. Set up the computer right now.

MR. HERBERT: We can't because the State has their computer set up.

THE COURT: Well, how long does it take to plug in? All right. Step back a little bit.

Come up, Elizabeth. How long is it going to take you to set up?

MS. FLEMING: Three minutes.

THE COURT: Okay. Then I'm going to have them walking back and forth?

MR. HERBERT: I just wanted to bring the point up.

THE COURT: No, you did bring up a good point. After the Defense's closing, I'm going to have a short recess and then the State will do rebuttal because the instructions are long, so then I'll do the instructions right after that.

MR. HERBERT: Okay.

THE COURT: All right. But if you run into any difficulty, then we'll just have them take a recess,

you know, so you're all right. All right. Great.

MS. FLEMING: Thank you.

THE COURT: Thank you. Court's in recess at this time.

(A short recess was had.)

THE CLERK: Jason Van Dyke.

THE COURT: All right. The jury's ready?

THE SHERIFF: Yes, Judge.

THE COURT: Everybody else is ready. We're all set out there.

All right. We're ready to go. Bring the jury out, please.

THE SHERIFF: All rise for the jury.

(Whereupon the following proceedings were had in open court in the presence of the jury:)

THE COURT: Will everybody please be seated. Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: You all know the two questions, so is there anybody in our wonderful jury panel that cannot say -- cannot answer the questions no, no? Please raise your hand.

(No verbal response.)

THE COURT: You're outstanding. Thank you very much.

Ladies and gentlemen, we're at the conclusion of the trial. Basically here's what's going to happen: After my remarks, the attorneys will address you on what we call closing arguments. And closing arguments are a discussion of the facts that have been proven at trial, reasonable inferences to be drawn from the facts, along with circumstantial evidence.

Anything that the lawyers say in closing arguments is not to be considered as evidence. And as you've seen, these are very professional attorneys with high integrity, so this is just a quality control admonishment. Anything that the attorneys say in closing arguments that conflicts with your individual recollection of the evidence should be disregarded.

Following closing arguments, I will read the instructions of law that you are to follow in this case. You'll get these instructions in writing along with your verdict forms for your deliberation.

When you go back to the jury room to begin your deliberations, your first duty will be to select your foreperson. She or he will preside during all of your deliberations.

You have -- You know, I'm telling you, you might get sick of it, but it has to be said, you've just been outstanding. Everybody's been paying attention and nobody could get a better jury than this so I want to thank you right now.

All right. At this time, closing arguments.

MS. GLEASON: Thank you, Judge.

THE COURT: State?

MS. GLEASON: Laquan McDonald was never going to walk home that night. The defendant decided that on the way to the scene. You heard what it was that he said, I guess we'll have to shoot him. It wasn't the knife in Laquan's hand that made the defendant kill him that night, it was his indifference to the value of Laquan's life.

From the time the defendant fired that very last shot and Officer Velez immediately picked up the telephone and called the Fraternal Order of Police, the police union, this case has been about exaggerating the threat and trying to hide behind the police shield. Why? Because there's no justification for shooting Laquan McDonald that night. Not one shot. Not the first shot, not the 16th shot.

Okay. Let's get one straight -- thing

straight here. Laquan McDonald is not on trial. How can anything about his troubled life possibly have impacted the defendant when he made the decision to shoot? The defendant knew nothing about Laquan McDonald.

Now, as Mr. McMahon told you in opening statements, police officers can use deadly force in very limited situations. And the judge is going to instruct you on the law. And the judge will instruct you that in each of those situations, an officer can only use deadly force when it's reasonable and necessary.

When a police officer puts on his uniform, he knows that he can only use deadly force when it's reasonable and necessary. You know from the minute that an officer enters the police academy, they're taught that. You even heard from a witness on the stand who's an attorney who taught when the defendant went through the academy they're taught that they only can use deadly force in very limited situations when it's reasonable and necessary.

Now, we all know society allows a police officer to carry a deadly weapon. An officer can order you to stop. An offer can tell you to do something.

An officer can even arrest you for certain situations. However, they do not have the right to use deadly force just because you will not bow to their authority. Just because Laquan McDonald was ignoring him that night, he did not have the right to use deadly force.

We all know that authority can be abused. And an officer knows that when he abuses his authority and uses deadly force when it's not reasonable and necessary, he has to be held accountable. This is not the Wild West out here when an officer can shoot an individual using deadly force and then try to justify it later.

We know the defendant contemplated the decision to shoot the -- Laquan before he even got out of his vehicle, before he even laid eyes on Laquan McDonald at the scene. When he was a block and a half away he was contemplating shooting him and he never adjusted that mindset once he got on the scene to see what was really happening.

He shot too early, he shot too often, and he shot for way too long. He fired 16 shots into Laquan McDonald's body where no reasonable police officer can believe it was necessary. Not the first shot, and certainly not the 16th shot.

What was Laquan doing? He was veering away from the officer. He was surrounded by police officers. And an officer with a Taser was 30 seconds away.

Here's a clip. Within like two seconds, Officer Walsh is going to kick the knife out of -- from Laquan.

(Whereupon a video was played.)

MS. GLEASON: There he just kicked the knife. There's Officer Ivankovich arriving on the scene with the Taser. It's about 25 seconds after he kicked the knife from Laquan's hand.

The judge is going to instruct you as to the law. And he's going to tell you that under the law, the defendant can be found not guilty of first degree murder, guilty of first degree murder, or guilty of second degree murder. I'm going to read the jury instruction and tell you what it is that we have to prove for the defendant to be found guilty of first degree murder. It's sort of long, so bear with me.

To sustain the charge of either first degree murder or the charge of second degree murder, the State must prove the following propositions. The first proposition: The defendant performed the acts which

caused the death of Laquan McDonald. Second proposition: That when the defendant did so, he intended to kill or do great bodily harm to Laquan McDonald, or he knew that such acts would cause death to Laquan McDonald, or he knew that the acts created a strong probability of death or great bodily harm. And the third proposition: The defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberation on these charges should end and you should return the verdict of not guilty of first degree murder.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder. You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you first determine that the State has proved beyond a reasonable

doubt each of the previous stated propositions.

The defendant has the burden of proving by the preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded considering all the evidence in this case that it is more probable true than not true that the following mitigating factor is present: That the defendant, at the time he performed the acts which caused the death of Laquan McDonald, believed the circumstances to be such that they justified the deadly force he used but his belief that such circumstance existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that the mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of the first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that the mitigating

factor is present so that he is guilty the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

So, these are the three propositions that the State has to prove: We have to prove, one, that the defendant performed the acts that caused the death of Laquan McDonald. That's been proven beyond a reasonable doubt. We know the defendant fired those 16 shots that killed Laquan McDonald.

The second proposition that we have to prove is that when the defendant did so, one, he intended to kill or do great bodily harm to Laquan McDonald. Well, he certainly knew that when he was firing 16 shots into the body of Laquan McDonald that he was going to kill him or do great bodily harm. Or he knew that such acts would cause death to Laquan McDonald. Well, certainly we know that if you fire a gun into somebody 16 times, you're probably going to cause death. Or he knew that such acts created a strong probability of death or great bodily harm to Laquan McDonald. Certainly the defendant knew at the time that he was firing each one of those shots that there was -- he was creating a strong probability of death or great bodily harm to

Laquan McDonald.

The third proposition is that the defendant was not justified in using the force which he used. And, ladies and gentlemen, that's what's at contention here. The defendant was not justified in using the force. And what do we mean by that? It wasn't necessary. Laquan wasn't doing anything at that moment that made it necessary to kill him, to use deadly force, to shoot him one time versus 16 times.

The defendant had a million other options that he could have used other than firing that gun. And the biggest one he could have used was time, patience. We know that that Taser car arrived within 25 seconds or so from Walsh kicking that gun [sic] away from Laquan. There's absolutely no justification for the defendant using deadly force.

THE COURT: Just a correction, there was -- he kicked the knife away, not the gun.

MS. GLEASON: Did I say gun? I'm sorry.

Often people have a misperception about what we have to prove and they think that we have to prove that murder was premeditated. You're never going to get an instruction that there's anything about premeditation in this case. The instructions that I

just read to you and the three propositions, that's what we have to prove.

Now, we don't have to prove that all shots killed Laquan. You can find him guilty of first degree murder if you believe just one of the bullets killed him. However, we know from the evidence in this case that Laquan McDonald needed every drop of blood in his body. Why? Because the cause of death from gunshot wounds, basically he bled to death. So every one of those shots contributed to his death. They shortened his life. Maybe he would have lived a little bit longer if he hadn't been shot all of those times. And, you know, it's undisputed. Both pathologists testified that when the -- Laquan died from multiple gunshot wounds.

Now, the defendant is also charged with the offense of aggravated battery with a firearm. And the judge is going to read you this instruction. It's much shorter.

To sustain the charge of aggravated battery with a firearm, the State must prove the following proposition: That the defendant intentionally caused injury to another person. Second proposition: That the defendant did so by discharging a firearm. And,

third proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that each one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

So for aggravated battery of a firearm, we have to prove, one, that the defendant intentionally caused the injury to another person, Laquan McDonald. Obviously he intended -- intentionally caused injury when he shot him 16 times. The second proposition is that he did so by discharging a firearm. We all know that he shot him. He discharged his firearm. And, again, the third proposition: That he was not justified in using that force because the force was not necessary.

Each of these 16 bullets caused injury to Laquan, from the first shot to the 16th shot. You saw this by -- when both pathologists I think testified. Laquan's body was riddled with bullets. He had eight

bullet wounds that went in one part of his body and out the other. He had eight bullet wounds that went in and the bullets stayed in.

You saw that. That's the graze wound to the head. You saw that. Multiple shots to the chest area. The one right by his armpit. One on the other side of his body. Chest, multiple gunshot wounds. That was to his elbow there. There was one to his back. It's a close-up of that one to the back. You even have, like, bullets, fragments in his mouth.

His body was riddled, broken, and bleeding when the defendant finished those 16 shots. And each one of those shots is a crime. Aggravated battery of a firearm.

You know what? Dr. Teas even acknowledged on cross-examination that each of these caused injury and each caused blood loss. Now, she said -- she quibbled about whether or not it was a significant injury or blood loss. Really? You make that decision. Wound No. 5, which was the elbow, she says it's not significant. It went in and went out and it broke bones. But in her mind, that's not significant. Well, ladies and gentlemen, it's definitely significant.

She also quibbles about whether or not the 14

or 15 additional shots matter. The evidence is clear that Laquan McDonald was alive each time the defendant shot him. They all mattered. Each separate shot is a crime. Each time the defendant pulled that trigger, and we know he had to physically pull the trigger each time he fired that gun and hit Laquan's body, he committed that offense of aggravated battery with a firearm. And when Laquan, when it was all over with, this is what his body looked like, riddled with bullets and injuries.

You're going to get another instruction from the Court. And this instruction is about causation. And this is the instruction: In order for you to find that the acts of the defendant caused death of Laquan McDonald, the State must prove beyond a reasonable doubt that the defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it's not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Now that's sort of confusing because we know all the acts of the defendant were the sole cause and immediate cause of his death. So basically what this instruction is telling you is that all of the acts

contributed. Laquan was entitled to the best chance of his survival. Each shot robbed him of that chance of survival. It's certainly possible the shot to the head and the hand might not have caused his death that night, but they all contributed because he bled. This last moments of his life are important. The defendant made those last moments of his life a nightmare. He riddled his body with bullet after bullet. That's why every shot matters, because it shortened his life. It certainly mattered to Laquan McDonald.

Now, the judge is also going to give you an instruction as to official misconduct. The defendant is charged with one count of official misconduct. To sustain the charge of official misconduct, the State must prove the following propositions. The first proposition: That the defendant was a public employee. And, second proposition: That when in his official capacity, the defendant knowingly performed an act which he was forbidden to perform. And, the third proposition: The defendant was not justified in using the force which he used.

If you find from the consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the

defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant guilty [sic].

So, again, three propositions. One: The defendant was a public employee. He's a Chicago police officer. He's a public employee. That when in his official capacity. You know he was on duty in his official capacity as a police officer. And that he knowingly performed an act which he was forbidden to perform. That act is using deadly force when it is not necessary or reasonable. That's the act of official misconduct. That's the act of first degree murder and those 16 counts of aggravated battery with a firearm.

Now, from the very beginning the defendant has exaggerated the threat. Do you recall he told Detective March, the detective who was on the scene that night, that when McDonald was within 10 to 15 feet of him, McDonald looked at him and raised the knife across his chest over his shoulder, pointing the knife at him? He also told the detective that in defense of his life he backpedalled and fired a handgun at McDonald to stop the attack. He told him that he

continued to fire the weapon at McDonald as McDonald was on the ground and McDonald appeared to be attempting to get up. None of that happened. You've seen the videos. He made it up to justify the use of deadly force.

What did the defendant tell you when he took the stand? He told you that Laquan raised the knife by his side across his body and pointed it to the left. Defendant says it happened. It's not on the video. It's not on the defendant's own animation of what supposedly happened that night. And he couldn't remember on cross, could he, that he told Detective March those things that night? He couldn't remember that he told the detective that night that Laquan had raised the knife over his shoulder and pointed it at him. Well, you have to ask yourself, isn't that convenient that he can't remember that he made that statement or the others? Perhaps that's because those statements and the ones that he made on the witness stand don't line up with the video.

He told you on the stand that he opened his car door because he thought he could knock Laquan McDonald down with the car door. You saw the video. Was that even plausible or believable from where his

squad car was at? He was two lanes away from Laquan McDonald at the point that he opens the door. Now, he told Detective March that night he opened the door because he was going to get out and confront Laquan at that point but his partner, Walsh, told him to stay in.

He says that Laquan McDonald looked at him with an expressionless face and bugged-out eyes. He told Detective -- or Dr. Miller that he looked into Laquan's soul. Really? He looked at Laquan McDonald for six seconds. Six seconds before he made the irrevocable decision to shoot him, not once, but 16 times.

Now, he demonstrated that once he realized Laquan was on the ground, that he brought the gun down and that he brought the gun down and then he reassessed. And then he tells you -- he claims at that point that Laquan is on the ground and trying to push himself up with his left hand and his left shoulder is coming up and he's still holding the knife and he can still see his eyes and so what does he do? He shoots him again and again.

It was his decision to keep shooting even after he says he reassessed. Well, was the decision to keep shooting or just to finish Laquan off? All of you

saw that video. You've seen it numerous times. Does it appear to you that Laquan McDonald was ever getting up after he hit the ground? The answer is no.

From the very beginning of this case, the defendant has exaggerated the threat and continues to exaggerate it. The defendant's authority to use deadly force is not unbridled and not without restraint. The defendant used deadly force when he was wearing the badge, when he was wearing a police uniform, and while he was under the cloak of a police officer. And you know what? When deadly force is used when it's not necessary, when it's not justified, it is first degree murder, it's 16 counts of aggravated battery, and it is official misconduct because no one is above the law.

THE COURT: Thank you very much.

Ladies and gentlemen, at this time we're just going to take a short break so that the Defense can set up their computer.

THE SHERIFF: All rise for the jury.

(Whereupon the following proceedings were had in open court outside the presence of the jury:)

THE COURT: All right. Will everybody please be seated. Could I have Mr. Herbert and Mr. McMahon over

here.

(A short recess was had.)

THE COURT: All right. Court's back in session. Please remain seated. Bring the jury out, please.

THE SHERIFF: All rise for the jury.

(Whereupon the following proceedings were had in open court in the presence of the jury:)

THE COURT: Will everybody please be seated. Thank you.

All right. Mr. Herbert?

MR. HERBERT: Good morning.

THE JURY: Good morning.

MR. HERBERT: Let me begin by thanking each and every one of you for your time, your attention throughout these past three weeks. On behalf of Jason, on behalf of my trial team, we appreciate it. Time is one of the most important commodities that we have and we appreciate it.

As Judge Gaughan has said several times throughout this case, without people like you, we wouldn't have the form of government that we have. You've been great but your job is just beginning. Your job is just beginning because now you have to make a

determination that decides the fate of Jason Van Dyke, his family.

MR. McMAHON: Judge, I'm going to object.

THE COURT: Stay in the courtroom, stay in the inner part of the courtroom. Sustained.

MR. HERBERT: It's an important task that you have. And our founding fathers recognized the significance and the importance of trial by one's peers. Jason Van Dyke chose you to decide his fate. And the reason that our founding fathers decided that it's so important, it's such a fundamental bedrock of our criminal justice system that somebody can be tried by their peers, it's because the founding fathers recognized that it's us, the people, that can protect somebody against an overzealous prosecutor, protect somebody against tyrannous acts. And that's why Jason Van Dyke chose you guys to decide his fate.

You might remember when I first talked to you about this case and I said this case is a tragedy, there's no question, but it's not a murder. It's a tragedy, but not a murder. And it's a tragedy that could have been prevented with one simple step. (Gesturing). At any point throughout that 20-some-minute rampage had Laquan McDonald dropped that

knife, he'd be here today.

You heard the prosecutor throughout this case, but they've been talking about Laquan and what he did to Laquan, Jason Van Dyke. I would ask you to -- to really don't believe those fake tears by the prosecutors about Laquan, because had Laquan McDonald dropped that knife and given up, they would have prosecuted him. They would have put him back in that cage that they had him for years prior to him being out on the street that night. So don't believe the fake tears.

Ladies and gentlemen, first degree murder, that's the charges here, first degree murder. It's unprecedented. It's unprecedented for a police officer who responds to a scene, is called to a scene, comes upon an individual with a knife acting in the strange manner. First degree murder? No motive? No malice? No premeditation? Well, the State said, Oh you'll see the instructions; you don't have to have that. Well, you can use your commonsense, ladies and gentlemen, and you can determine what is a murder. This isn't.

The charge -- The accusation of murder is the most serious accusation that somebody can put on another person. An accusation of murder is branding

that person as a murderer for the rest of his life. If the Government is going to put that brand on somebody, well, they better have the evidence to back it up. You as a jury can't accept that brand until and only if the State proves the case.

Ms. Gleason talked about a lot of things in her close. She wants to, as I told you at the onset three weeks ago, the State wants you to watch the last two minutes of this movie without knowing the context.

They keep talking about this Taser. This Taser was only 30 seconds away. All right. Well, 30 seconds in that situation, first of all, Jason Van Dyke, nor anyone else out there knew that this car was 30 seconds away. They want you to think that, but you'll see the transcripts. They never came over the air and said, We're -- we're almost there. They never even said they had a Taser. They asked for a Taser and then a car responded and said they're coming from a distance.

But then the prosecutors want you to think, well, he should have just waited 30 seconds. Right? Isn't that what the argument is? Well, I think that demonstrates the -- how preposterous their argument is and their charges are in this case. What was Jason Van

Dyke supposed to do, like tell Mr. McDonald, Hold on; we got a Taser coming? Was he supposed to run around the car with McDonald chasing him? I know. It's preposterous. But in this case, your job is to interpret it how a reasonable police officer would have acted.

We as civilians, we can't recognize a lot of things that police officers can. The prosecutors, you know, the most dangerous part of their day is crossing a busy street to go to Starbucks. We have to look at this from Jason Van Dyke's perspective. Probable guilt is not enough. The video is not enough.

Ask yourself, from the State's opening when they showed that video, did their case get any better? Did they have one witness get up there and say, that wasn't reasonable? They had Urey Patrick who said it wasn't reasonable, but Urey Patrick -- they made Urey Patrick watch the last two minutes of the movie without showing him the context. They blew up the shot of Laquan McDonald flicking out his knife. Remember seeing that blown up? Why didn't you show that to Urey Patrick? He never saw it.

How about Rudy Barillas attempt to be stabbed moments earlier? Why would you hide that fact from

your expert? Because they needed to get an opinion. And you'll see what happens with his opinion.

I've been doing this a long time. Normally you're lucky to get two or three good points out of the other side's witnesses. I want you to look at this case, the State's case, and tell me, did they prove that case beyond a reasonable doubt?

These questions --

MR. McMAHON: I'm going to object. This is -- This is a statement of the law and not --

THE COURT: All right. Take it down. You certainly can argue it.

MR. HERBERT: Sure. And, Judge, we disclosed it to them last night, so I don't --

THE COURT: That doesn't make --

MR. HERBERT: -- know why they're objection now.

THE COURT: -- any difference. It's still the law. And I'll instruct them of the law, not you.

MR. HERBERT: So I cannot get into any portions of the law?

THE COURT: You can -- You can argue but you're not going to submit the statements from an appellate decision up there.

MR. HERBERT: Okay.

THE COURT: All right?

MR. HERBERT: You remember when you spoke -- or when Judge Gaughan spoke to you early on.

MR. McMAHON: I'd ask that the --

Thank you.

THE COURT: When I say take it down, Ms. Fleming, take it down. Do you understand me?

MS. FLEMING: Yes.

MR. HERBERT: And he told you that you have to presume the defendant innocent. That presumption goes all the way through every proceeding here. It goes through until you go back there and you look to see, Did the State prove this case beyond a reasonable doubt, beyond -- beyond a doubt based on reason?

Let's look at their evidence. Their evidence, their case. I will submit to you that each of these points -- and there's a lot of them -- each one independently is reasonable doubt. It's for you to determine what the evidence is. Take a look at these facts, please.

This is the first police officer, McElligott, that was on the scene.

How soon after you get out of the car did he flip open that knife?

Within seconds.

Within seconds? That raised the threat level, didn't it?

It sure did -- or yes.

Flipped out a knife with you within, what, ten feet away from him?

Yes.

So you pull your gun, right?

Yes.

Officer McElligott pulls his gun. Laquan pulls out his knife. McElligott, ready to shoot, if needed.

So you followed him from 10 to 15 feet away with your gun drawn, he had his knife out, right?

Yeah.

That was a block away from the Burger King, true?

It was less than a block.

Less than a block away. And that's when he attacked your tire, right?

Yes.

And he attacked the windshield, right?

Yes.

When Officer Gaffney, who was sitting in the

car, attempted to cut Laquan McDonald off with the vehicle, did you at any time observe Laquan McDonald stumble in any way?

There was -- When he met with the vehicle, he stumbled and spun and that's when he swung the knife at the tire.

Here's the theme, ladies and gentlemen. We talked about it in opening and you see it throughout this case. Confrontation. When Laquan McDonald gets confronted, what happens? He attacks. He was confronted by Rudy Barillas. What happened? He attacked. He was confronted by the police officers here. He attacks. Thankfully he didn't harm a police officer, but he attacks. The threat level is rising each and every time as Jason Van Dyke gets to the scene.

Still McElligott.

What, if anything, happened when Officer Gaffney tried to cut off Laquan McDonald the second time?

He swung the knife at the window.

By stabbing the tire and stabbing the windshield, he has clearly raised the threat level, has he not?

Yes, he has.

And there are trucks parked there, correct?

Yes. There are people parked there.

People park their cars there, right?

Yes.

Again, threat level rising. And this is when Jason Van Dyke first comes on the scene. He needs to cut Laquan McDonald off from getting into that Burger King.

And you heard, I think over the radio, you testified that you may have heard somebody who might have been calling a Taser?

Yes.

You don't know where that person was coming from, right?

I didn't know, no.

And you didn't know how long it would take for them to get there, correct?

Correct.

State makes a big point about, Well, McElligott didn't shoot him. Well, McElligott had a completely different interaction with Laquan McDonald than Jason Van Dyke. It is of no relevance, as their expert witness will testify to.

If he would have turned and started walking towards you with that knife, that would have changed the situation completely?

Yes.

Thirty times. Thirty times McElligott tells him to drop his knife.

Next witness, State's witness, State's witness to prove its case: Officer Joe Walsh. Remember him up on the witness stand. Did he prove the case for the State?

Question: These videos don't show your perspective to what happened, correct?

Not at all.

These videos are far -- are from behind McDonald, right?

Correct.

The State's only evidence that they can argue with a straight face is this video. Well, the video is essentially meaningless based upon all the testimony that you've received here. And we'll get into that. It shows the perspective but not the right perspective, so we can't view just that video. That's what the State wants you to do. That's why they played it in opening and their case from there went downhill.

So you're looking at it from a completely different perspective than what everybody in here is seeing, correct?

Yes.

Joe Walsh. This is the only individual that was in a position that is anywhere remotely close to where Jason Van Dyke was. The only person. So I assumed that he was going to give the testimony that, Wow, I shouldn't have shot him; I wouldn't have shot him. He doesn't. He talks about trying to keep him out of the Burger King. He talks about trying to keep him away from people. That was their intent. That was his mindset.

Let's take a look at your perspective, Mr. Walsh. You pull up and another police car had just passed you; is that right?

Yes.

They're going north, away from where you're going, correct?

Yes.

That was officer Velez who we'll get to in a minute, but remember the significance. Officer Velez pulls her vehicle away, her partner does who's driving, because she's scared to death, he's scared to death,

because they think -- they know he's got a knife but they think he's got a gun. They pull away. Is that significant? Did Jason Van Dyke think he had a gun at that point? No. He testified truthfully. But it's significant from the standpoint that the last line of defense, who was it? Jason Van Dyke.

You're the only person there -- Officer Walsh again -- that can stop him at that -- at that point?

That's what I believe. Last line of defense.

You're trying to keep this guy with a knife who's already damaged a police car, trying to keep him away from people?

That was my mindset.

You had your gun drawn?

I did.

You had it drawn because he was danger, was he not?

I believed he was.

When you get out of the car, you had to walk behind Officer Van Dyke, right?

Initially I was ahead of him.

You had your gun out because you were prepared to shoot if you had to; is that right?

Yes.

Training. He talks about the 21-foot rule. Do you remember that?

The rule is within 21 feet if your weapon is holstered, the belief is or the drill they refer to is, within 21 feet, an individual armed is going to stab you and you may be lucky to get off two shots per the drill or study that has been in existence since 1983.

Well, we know that it takes about a second and a half for Laquan McDonald to close the distance that had he on Jason Van Dyke. We know that from testimony, State's witnesses as well. And we -- you saw the demonstration of Mr. Barry Brodd. Quick. Somebody coming at you with a knife.

Walsh tells him three or four times to drop his knife. He keeps walking towards you. He keeps walking towards you. Huge part about the State's case: Laquan McDonald was walking away. He wasn't, ladies and gentlemen. I mean, I don't know what Laquan would have done. I don't know if he would have attacked Jason Van Dyke, none of us do, but it's irrelevant to our analysis here.

He wasn't walking away. The video shows that he crosses over that line. But, again, we're not disputing that he did cross over that line. But does

it show that he's walking away? If he wanted to go to that fence like I told you in opening, he could have hopped that thing probably without even touching it. He could have climbed that thing in a second. He didn't do that. He changed his behavior, remember, from running away to, okay, a slow skip. Why? Prepared to attack. And even if he wasn't, it certainly was reasonable for Jason to think that, and that's what the evidence shows here.

Joe Walsh. Two steps forward. Big deal about, Well, you didn't shoot him.

Well, I didn't say I wouldn't have shot him. I was confident that Officer Van Dyke took necessary actions to save himself and myself.

So you would have shot him if you had to, right?

Yes.

Right there it's game over. If the only person, the State's evidence, the only person that is even close to the perspective of Jason Van Dyke, he says it's reasonable. That's the basis here. Based upon a reasonable police officer. Their case. Their evidence.

Would he have been a danger to the public?

Yes.

The video.

(Whereupon a video was played.)

MR. HERBERT: State's only evidence. They blow it up. They blow it up to show him flicking out the knife. Right there. The arrow. What is the arrow that the State put in there? What is the arrow showing? Exactly what Joe Walsh showed when he demonstrated it. At that point, Laquan McDonald turned and raised the knife over his shoulder. The State wants -- wants you to think that -- that Jason Van Dyke said he raised it over his shoulder like this (indicating). He didn't. Raised it over his shoulder. Looked right at him. Targeting. Changed his stance.

Officer Rettig, Paul Rettig, State's witness.

And, in fact, cameras -- watching a camera, it's not the same as watching with your eyes, correct?

That's correct.

Remember? He was the video guy.

What are some of the inherent problems with videos as opposed to seeing it with your own two eyes?

Aside from the fact it doesn't capture everything on a number of stills, there's numerous differences. Color may be different from camera to

your eye, contrast, the video system might not capture the same -- it says collars, but it colors. It's a typo -- that you can see with your eyes. Distorts images. Yes, it may.

Two-dimensional, right?

Yeah, correct.

Difficult to judge proper depth on a video, right? State's witness.

It can be.

Appeared different than it would with your naked eye and that's because it's two dimensional, correct, and so distances are distorted, correct?

They can be.

Dora Fontaine. Remember the female police officer that came, that she arrived after -- just after the shooting? She didn't see the shooting, she said, but she does talk about some facts that are certainly helpful to Defense. Again, from the State's witnesses.

He was walking southbound with a knife, swaying a knife. Dora Fontaine. That's what Jason said, that's what Joe Walsh said.

When you say swaying, what do you mean?

Swaying it back and forth.

That's what Jason said, what Joe Walsh said.

Do you remember being asked -- I want to ask you, Officer Fontaine, based on your training and experience, as the subject is lying on the ground here, is he any longer a risk of life and death, physical injury to you? Your answer was, He still has a weapon. As long as he has a weapon, yes. And that's your answer?

Yes.

And that would be your answer today?

Yes.

Urey Patrick, the State's witness. You're going to see -- I'm going to show you a number of factors that you can look at for the State's -- the State's expert witness on the critical issue. What does he say? Does he prove the case beyond a reasonable doubt for the State? I don't think so.

McDonald was a risk and he needed to be --

Right.

-- confronted. And that was before you knew that he tried to stab some guy twice, right?

Yes. I didn't know that.

You would agree with me that this knife is a deadly weapon?

It can be, yes.

Why is a knife of such as this a deadly weapon?

Because it can inflict serious injury and even death upon people.

How much damage do -- Remember the question I asked him? I said, How much damage can a knife do? His answer was great. He paused. A lot.

How about a bulletproof vest? No protection from stabbing. It could penetrate the vest. That's what I said.

You talked earlier about when police officers shoot, they don't shoot to kill people, correct?

Correct.

They shoot to eliminate the threat, correct?

Yes.

And, in fact, police officers don't shoot because they want to kill somebody, correct?

I agree.

Important. The State has to prove Jason Van Dyke guilty of all the charges that it filed but also every single element within those charges. If he don't prove every element within those charges, it has to be not guilty.

Intent. Their witness: He has no intent to

kill. The intent is to neutralize the threat, that's it.

Asked specifically, Urey Patrick, their witness: Jason Van Dyke's behavior, did you believe that he was shooting to eliminate the threat, whether reasonable or not?

I have no reason to believe that was not his motivation.

He didn't intend to kill him. That's not their goal. They're trained to continue shooting until they perceive that the threat has ended, because frequently police officers miss with more shots than they hit with and the effects of wounds take time to accumulate.

That's exactly what Jason Van Dyke said. It's exactly what he was experiencing.

Asked specifically about the question of 21 feet. The person with a knife at 21 feet. They can get to you before you can recognize a threat, draw and fire your weapon. It's a training meant to heighten awareness that someone 20 to 30 feet away from you can be a threat. Their witness.

Jason Van Dyke reloaded after emptying his -- his firearm. State made a big deal about that,

remember? Why? Because they have no case. They have no evidence.

The fact that Jason Van Dyke reloaded his weapon, significance in any way? Urey Patrick, their witness, Not in my mind.

In fact, it's immaterial to your analysis, correct?

I would agree that when an officer starts shooting and when he stops shooting, however long or however many rounds that takes, it's all a continuous event. It is not separate events that have to be separated -- separately assessed and judged, if you will.

Very, very important, ladies and gentlemen. The State has decided to charge 16 separate counts of aggravated battery. It is all one physical act. They have to prove that he had intent to fire each one of those separately. They can't. It's one continuous act.

Urey Patrick right at the bottom here. Asked about other police officers. They made a big deal about, Well, there was this officer on the scene, he didn't shoot; this officer on the scene, he didn't shoot.

Urey Patrick. Well, the only perspective that's relevant to your analysis would be the perspective of Jason Van Dyke. Would be an examination of the circumstances from his perspective, not from the perspective of this car cam video. Their witness. Game over.

He talks about imminent threat. Imminent threat is one that doesn't necessarily have to happen but could happen. Yeah, when -- when he turns with that knife over his shoulder, we don't know. Maybe he would have dropped the knife after that. Maybe he would have turned back and ran over the fence. We don't know. Doesn't matter. Doesn't matter, according to the State's witness. Doesn't have to happen but it could happen.

Urey Patrick. A police officer doesn't have to wait until somebody inflicts injury on them for it to be reasonable fire?

That's correct.

Urey Patrick again. He was a great witness. Police officers are always reacting to what the person they are interacting with does.

And you would agree with me -- I asked him this question: You would agree with me that a police

officer is not required to trust that this individual have faith in his good graces and doesn't have to trust that this person will just give up, right?

That's correct.

And along those same lines, This isn't like a boxing match or a sanctioned event. The police don't have to give -- the person that they are encountering, they don't have to give them a fair chance, do they?

No. They're taught to use -- once they make the decision to use deadly force, to continue to use it until they see -- until they perceive that the threat has ended.

That's their witness. And important with Urey Patrick as well. You heard it from Urey Patrick, you heard it from Paul Rettig, you heard it from Dr. Miller, you heard it from Nick Pappas, which we'll get into. When a police officer starts to fire their weapon, they fire as quick as they can and get as many rounds out as they can until they recognize that the threat has been neutralized.

The State wants you to look at that video and say, As soon as Laquan McDonald fell on the ground, there couldn't have been any more shots. It's not true. It's not true. It's not what their witness

said. It's not what the evidence is in this case.

A police officer can fire -- we have evidence of it, the FBI tested it, remember the State didn't want to put that video in, but we -- we put it in, of the person that had similar skills to Jason Van Dyke. Six shots in one second. State said, Well, it took him only one and a half seconds to fall. Okay. That's nine shots right there.

And then what did Urey Patrick, what did every other witness say? It takes up to a second and a half to realize that a threat has been neutralized. It takes up to a second and a half for your eyes to see the threat be neutralized, get back to your brain to tell your brain to stop shooting. That's another second and a half. That's nine more shots. That's 18 shots that their witness justified Jason Van Dyke using. He didn't fire 18 shots.

There's a lot more on Urey Patrick. I'm sure you have notes on him; but I think we've identified the key points for him.

Well, Urey Patrick talks about things that indicates to reasonable police officers that a threat may be happening. Okay? And this is important because if -- if Laquan McDonald did not appear to be some kid

whacked out on PCP acting really bizarrely, if this was a kid in a Boy Scout uniform just walking down the street with a knife and Jason Van Dyke shot him, yeah, probably wouldn't be justified, but it's not. Urey Patrick says you got to look for those signs. You're a police officer. Their witness.

Urey Patrick, remember when I asked him about -- Well, he was a witness for the State. Well, I said, Well, in fact, you recently testified in a case where you found a police officer's actions were reasonable when an individual raised a stick and they were within 8 to 10 feet of that police officer when they raised it as they attacked the police officer. Raised the stick. The shooting happened. Eight to 10 feet away. That's good, but a knife, not as dangerous as a stick?

Targeting. Urey Patrick, he talks about that. He talks about targeting is when an individual is watching an officer, paying attention to the officer. It's an important point here. Signs of a disturbed individual, signs of a potential threat, we heard it from their witnesses. Somebody that doesn't make eye contact, somebody that doesn't respond to dozens and dozens of police commands, marked squad cars

flying in every direction, somebody just walking down the street not making eye contact, that's a sign of an imminent threat. Testified by their witnesses.

But how about when -- Remember we talked about this in opening? I said, Think about a monster movie.

Excuse me.

Think about a monster movie. When they're walking down the street and say there's -- the victim is hiding in the bush, you know, there's not much danger here, but when that monster suddenly stops and turns and looks right at that -- that victim in the bush, I said -- I think I said that's when the music starts to play. That's when -- That's when the filmmakers are like, Okay, I got them right now. Jason Van Dyke wasn't in a movie, ladies and gentlemen. It wasn't a video game. This is real life.

Urey Patrick still. No way of knowing what Jason Van Dyke was seeing, experiencing or capturing?

I haven't talked with him.

Important, because the only way to fully -- If you don't have video from somebody's perspective -- Yeah, you could have talked to Joe Walsh. He didn't talk to Joe Walsh. Joe Walsh would have said, This is

what I saw. I would have shot the guy. He was a danger. They didn't.

They didn't talk to Jason Van Dyke. Well, the State made a big point about how Jason Van Dyke spoke to -- to our witnesses. He spoke to Larry Miller. He spoke to Barry Brodd. What's wrong with that? That's how you provide an in-depth analysis. That's how you get the context for the full two-hour movie, instead of showing the last two minutes.

Urey Patrick. Video. State's only evidence. That portion, that's not the same as seeing that in real life?

Yes.

Dr. Miller. You remember his testimony. It's pretty hard to read. I'll try my best here.

So the main difference is for most of us if -- if we're faced with danger, our brains are telling us to do whatever you can to get away from the danger. If your car's skidding off the road, correct it. If someone is chasing you, elude them. If the house is on fire, get out of it. First responders, police officers, their task is a little different because even though their brains are telling them to run, get away, save yourself, their job is exactly to

do the opposite. They have to run towards the danger. Different than what an average civilian. The average civilian like you and I is heightened to that danger, heightened to that threat level, and therefore the types of reaction that we see are probably a little more common.

The threat level, the actions of Laquan McDonald on the ground, Jason Van Dyke saw them a lot different than what was on that video. He saw it different for a number of reasons. One, because that video doesn't capture it properly. All the other witnesses saw him moving. But does it show him about to get up? Does it show him, you know, up to his knees and about to get up? No, it doesn't. It doesn't. But you know -- you know who it would look like that to? Someone that just had used his gun for the first time in his career, working in the most dangerous neighborhoods in the city of Chicago. That person, just seconds after he had to shoot somebody, the threat looked bigger, it looked closer. Does that mean Jason Van Dyke is a weak person? Does that mean that he has some mental problems that prevent him from being a reasonable police officer? No. That's exactly how police officers in that situation would respond.

State makes -- talked about, Well, Jason Van Dyke, he said, We're going to have to kill this guy, somehow that that is a -- some negative connotation towards Jason Van Dyke, some connotation that Jason Van Dyke was going to shoot this guy because, as they say, Jason was angry that this guy was not listening to them. You see any evidence of that? Jason was angry at the young black boy. Do you remember that in opening? Did you see any evidence that race had anything to do with this case?

When you don't have evidence, you use argument. When you go back there, you can't listen to the arguments. Put them out of your mind. The evidence came from this witness stand and were exhibits that Judge Gaughan entered into evidence, and you'll get those back there.

Here. Reasonable. Was it reasonable for Jason Van Dyke to experience what he said he was experiencing? Well, he was in fear. Any reasonable police officer hearing their fellow officers are being attacked would be alert to a threat. That goes to his comment that he made to Joe Walsh.

When Jason Van Dyke hears that police officers are attacked, that's a big deal. The State

wants you to think, Well, they just popped his tire and he was just playing around. Nobody was afraid. Nobody was scared.

Well, why didn't you call -- why didn't you call Mr. Gaffney in here to say, Yeah, it was nothing, just a little misunderstanding. Why? Because Gaffney would have said, I was scared to death, just like a police officer in that situation --

MR. McMAHON: I'm going to object and --

MR. HERBERT: -- would have done.

MR. McMAHON: I'm going to object and ask them to disregard what Officer Gaffney would have testified. He was not a witness and there's no testimony about what he would have done.

THE COURT: That would be sustained.

Ladies and gentlemen, Officer Gaffney did not testify. That is not evidence. So disregard the last statement made by Mr. Herbert. Thank you.

Proceed, Mr. Herbert.

MR. HERBERT: And, in fact, after Joe Walsh testified, you didn't hear from any of those other officers on the scene, right? Why not? Joe Walsh had killed their case. Game over.

Dr. O'Donnell, the pharmacologist, interprets

the results for Jason Van Dyke. Valproic Acid and Risperdal, antipsychotic medicine. Jason Van Dyke was -- or, I'm sorry, Laquan McDonald was prescribed those. Had not been taking them that -- within the recent past of when he was killed. Significance of that? Yes, when coupled with PCP.

Used PCP within a recently relative -- a relatively recent time period. Well, tell me about PCP at the levels that Laquan McDonald was tested at. And remember that this is 56 nanograms I think it's supposed to be. But anyways, this is from the cavity blood. Remember we heard from the doctor, we heard from Dr. Teas, we heard from the ER doctor this is from cavity blood. This is after they have already diluted the blood from the treatment.

So they said the levels were probably higher than this. But even a this level, assuming that this was a correct level, what can it do? Delusions, behavioral changes, aggressions, violence. Aggressive and violence.

The effect of his antipsychotic medication, not taking that, the second line -- third line there. And PCP, even in a patient without any psychiatric illness or any mental illness can cause severe

psychiatric toxicity. He took the psychotropic drug PCP, phencyclidine, which can cause severe rage, aggression, violent behavior.

Well, Jason Van Dyke didn't know that he -- Laquan McDonald's blood level was 56 nanograms of PCP. Agreed. Agreed. But those symptoms of rage, aggression, violent behavior, drug-induced psychosis, that describes Laquan McDonald. Yeah, Jason Van Dyke recognized it. Did he know it was exactly PCP? Of course not. Did he as a police officer recognize that this guy was whacked out? Absolutely. Did that play a factor in his role to shoot? There's no question.

Nick Pappas. Slide lock. Remember he was our training instructor? State makes a big deal he reloaded. Slide lock. The weapon should be immediately reloaded. That's how they're trained and drilled on that from the very beginning.

Knives are more dangerous than guns in certain situations. How quick can somebody cover seven yards, 21 feet, almost double the feet of what we have in the situation that Jason Van Dyke encountered Laquan McDonald right before he shot?

1.5 seconds.

Yeah, but that's from somebody that is

standing still, not from somebody that is already in motion, like Laquan McDonald, so that time would have been less?

Correct.

Intent. Again, Urey Patrick. Jason Van Dyke didn't have any intent to kill this guy. State's witness.

Mr. Pappas. Police officer's intent at shooting is to eliminate the threat, right?

Yes.

How about when he's on the ground, Mr. Pappas, does that mean that he -- can he still be considered a threat?

Certainly can be, yes.

Why? Because they can get up and reattack.

This is Officer Velez. Remember she -- she was -- talked about how she thought that Laquan McDonald had the gun and her partner drove away because they were so afraid? She sees Laquan McDonald. He looks deranged, just like Jason saw it. And she points to the points that I'm making.

You know, this is bizarre behavior. We had lights, sirens. He was not looking in our direction. There was nothing fazing him. He was like -- he was in

the twilight. Holding his side. Thought he had a gun.

Rudy Barillas, the working man, comes home from a long day's work. Little did he know he was going to encounter the burglar, Laquan McDonald.

Laquan got in there. We don't know how, but the gate was locked, right?

Yes.

What did you see?

Another person inside the truck.

It's a burglary, ladies and gentlemen. It's a burglary, and that's significant when we get to the peace officer's use of force statute in allowing somebody to use deadly weapon -- deadly force.

Got out of my truck, asked the person to leave. He didn't.

What'd you do?

Called the police.

Did he continue to advance towards you?

This is our first sign of Laquan being confronted that night. Consistent.

Continued to advance towards you? How close did he get?

About three feet.

What did he do?

Pulled out a knife and he wanted to hurt me.

And what did he do what that knife? 4phe came towards me. He tried to stab me.

Remember, and he demonstrated? Threw his phone at him. He flees when the police come. The police that night save Rudy Barillas. He couldn't talk. He was tongue-tied.

Remember his testimony about that knife that looks like a gun that looks like a knife? Jason Van Dyke, was he thinking that as he was firing his weapon? Probably not. But was it in the back of his mind? He received it in a training bulletin, officer safety bulletin. A lot of things in a reasonable police officer's mind.

Ms. Alexander, remember she talked about Laquan and his past? Well, Jason didn't know about that. Doesn't matter. You'll get a jury instruction on it. Talks about putting a slug in a judge's head.

Dr. Teas, she's clear, cause of death: Gunshot Wound -- I'm sorry -- No. 4.

The State in their case, they want you to believe that every single bullet, every single shot contributed to the death of Laquan McDonald. It's not true. It's not true. Dr. Teas gave it. So what are

they going to do to counter that? Bring in the pathologist that just wrote those -- a couple of words in there, kind of a cut-and-paste. Pulpifaction and hemorrhage. Just kind of throwing it in after a description of each shot. They didn't bring that person in.

Remember Dr. Arunkumar? Yeah, we can't find her. She's somewhere in Texas. Why didn't that person come in? Because that's the only -- The only evidence that they have that every shot contributed to the death was a couple of words that I argued were cut-and-paste and put in a report. Why didn't they bring her in? Because she screwed up and she knew that if she came in to testify, that's what she'd have to say. So can you rely on Dr. Arunkumar to rebut Dr. Teas? No. Dr. Arunkumar is doing nothing more than what the State did and what civilians will do, read something on a sheet of paper and assume that it's true, despite the evidence to the contrary. No evidence to the contrary.

Bleeding from every -- from every gunshot? Really? Why wasn't there a lot of blood on the scene? They called the -- Deputy Murphy in yesterday to show there was a lot of blood on the scene.

How much was there, half a cup?

Yeah, that sounds about right.

Half a cup? If you're bleeding from every extremity, there's not going to be more than a half a cup? Where was the blood? It was all in here. Why was it all in here? Because he was killed with that first or second shot as he was turned to face Jason Van Dyke with his knife raised ready to attack. The rest of --

THE COURT: Ten minutes, Mr. --

MR. HERBERT: I'm sorry?

THE COURT: Ten minutes.

MR. HERBERT: Okay. Thank you.

The rest of those shots, irrelevant at that point.

Jason Fries, the demonstration. State makes a big deal about, Well, the State's own video doesn't show Laquan McDonald raising the knife when he turns.

So what? Jason Fries was not here to do a video game reenactment to show all the movements of Laquan McDonald. He was here to show the distance between Laquan McDonald and Jason Van Dyke. If we -- If we had him put in all these things -- He said, I take the conservative approach. My analysis is to show the distances. And if you look at that distance, I

think it gives a better perspective, but still not Jason Van Dyke's.

Scott Patterson. He talks about that he's got to shoot 80,000 rounds a year I think he said. When I asked him, Do you ever shoot on the range and just empty your gun, shoot all 16 rounds?

Oh, yeah.

Do you have the intent to fire each one of those rounds?

No. No, you just fire. You empty the gun.

Barry Brodd. What's your opinion?

Laquan [sic] was justified.

I'm finishing up here, ladies and gentlemen. All of those factors that I just discussed, as I said, each and every one of them individually is reasonable doubt. Did the State prove its case? Not even close. But we've just been talking about the -- Jason Van Dyke's -- being in reasonable fear for his life and that's when he fired. That's what we've been talking about.

But remember when I told you in opening and I showed you the same slide that I'm going to show you right now? I told you that there's a statute out here -- and you'll get this jury instruction -- and it

talks about situations in which police officers can use deadly force, even when it has nothing to do with protecting themselves or somebody else. And I told you in the opening, I'm like, I don't know what the State's going to argue, but there's no evidence to rebut, to dispute what we're showing here.

Remember we had Ms. Sayre from the police academy talk about this? Peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance. He's justified in using force likely to cause death or great bodily harm. That's the defense-of-life portion. Or, or, or even if you're not afraid for your life or somebody else's life.

Here's where it differs between us -- a regular citizen -- and a police officer: They're allowed to use deadly force to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm.

He certainly threatened to kill Rudy Barillas, didn't he? He certainly threatened Officer Gaffney in that vehicle. Right there alone, he can shoot Jason Van Dyke [sic].

Or, even if -- even if he couldn't -- you didn't think he met that category, The person to be arrested is attempting to escape by use of a deadly weapon. Was Jason Van Dyke [sic] trying to escape by use of a deadly weapon? But for this weapon, he dropped it, he would have been under arrest. The weapon was the only thing that prevented the police from arresting Jason Van Dyke -- Laquan McDonald, excuse me.

Or, even if you don't buy that one, this individual indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Ladies and gentlemen, in closing here --

Thank you for the additional time, Judge.

In closing here, ladies and gentlemen ...

THE COURT: You have plenty of time. You have five minutes.

MR. HERBERT: Oh, do I? Thank you.

Ladies and gentlemen, the police saved Rudy Barillas that night. They saved him because when they arrived, that skirted Laquan McDonald off. Police are here to serve and protect. Remember I showed you the squad car video? They can't retreat. They can't run

away like us. And they have to encounter people that create their own destiny. I told you Laquan McDonald was the author, the choreographer of this story, and Jason Van Dyke had to be brought into it.

So I'm going to ask you, when you go back to the jury room and you start deliberating with your fellow jurors, just remember that, you know, sometimes the right decision is not always the easiest decision, but you -- you owe it to yourself to make the right decision here because nobody can fault you for making the right decision. You follow your heart, you follow your soul, you follow your mind.

You also owe it to Jason Van Dyke. He chose you. He chose you. He's putting his fate in your hands. We also owe it to our -- to our city, our county, our country.

You have a very important job here. It's a critical task. I'm going to ask you to follow your hearts, follow your minds, and do what you're required to do here, which is to base your decision based upon the evidence. This is a -- This is a grassroots case where we're going back to the jurors to decide this because the people can decide not looking through rose-colored glasses, not looking based upon motivation

for politics. It's you, the citizens.

Give Jason Van Dyke the benefit. He's innocent right now until you go in that room and say he's guilty. And the only way you can do that is based on the evidence. And if you review the evidence fair, impartially, I think there's really only one decision you can make, and that's not guilty. Thank you.

THE COURT: Thank you, Mr. Herbert.

Ladies and gentlemen, we're just going to take another short break while we switch over to the different computer.

THE SHERIFF: All rise for the jury.

(Whereupon the following proceedings were had in open court outside the presence of the jury:)

THE COURT: Ladies and gentlemen, we're going to take a ten-minute recess. Court's in recess.

(A short recess was had and a change of court reporters occurred.)

THE COURT: Court's back in session. Please remain seated. Bring the jury out.

(Whereupon, the following proceedings were held in the presence of the jury)

THE COURT: Everybody please be seated.

Mr. McMahon.

MR. McMAHON: Thank you, judge. We are here because Jason Van Dyke didn't value the life of Laquan McDonald enough to do anything but shoot him. In fact we know defendant Jason Van Dyke was contemplating shooting Laquan before he even arrived. Before he ever laid eyes on Laquan McDonald.

Mr. Herbert couple minutes ago said couple things I want to talk about briefly. One of the things that caught my attention was and I think this is a quote. A boy scout doing the exact same thing, that probably wouldn't be reasonable or we wouldn't be here. What's the difference between a boy scout acting the way Laquan was and Laquan McDonald.

You're going to get all the law in this case. All the law in the State of Illinois that applies to the facts in this case. That law is going to come from Judge Gaughan. What you're not going to consider because it doesn't apply to this case is motive. Or malice. Or premeditation. The jury instructions that Judge Gaughan will read to you and you will take back to your deliberation room is all the law that applies to the facts of this case. And nowhere will you read a

thing about motive, malice or premeditation. It's not relevant, it's not part of your deliberation and it's not anything that the State has to prove beyond a reasonable doubt.

Here's everything the defendant knew and heard when he made the decision to shoot Laquan McDonald.

(Audio played in open court).

MR. McMAHON: That's what he heard. That's what he heard, what he saw was the following.

(Video played in open court).

MR. McMAHON: The first arrow Mr. Herbert talked about, testimony that came from that witness stand is that that arrow represents evidence of the first shot. That arrow, first visual evidence of Laquan McDonald being shot by Jason Van Dyke. When the defendant took that witness stand he claimed that he killed Laquan McDonald for four reasons. One, he had a knife. Two, Laquan was within 12 to 15 feet of Jason Van Dyke. Three, Van Dyke told him to drop the knife and Laquan ignored him. And four, Laquan had big, bulging eyes and he looked right at him.

Based on those four reasons, those four reasons alone, the defendant told you it was necessary

to shoot and continue to shoot Laquan McDonald until he laid motionless on Pulaski.

Let's explore those claims in detail. And the context of everything that happened October 20 and compare what the defendant did with what was necessary by every other police officer and citizen that encountered Laquan in any way that night. From the truck yard to the moment of his death.

First it was Mr. Rudy Bureles and his wife, confronting Laquan in the truck yard. Laquan standing over Mr. Bureles and his wife three feet away and that exact same, with that exact same knife that Laquan had in his hand out on Pulaski. What was necessary to fend off Laquan in that dark and isolated truck yard? In that vulnerable position when Mr. Bureles bends down and grabs up, grabs a handful of rocks or stones? He threw his cell. phone and the stones and Laquan left to avoid the confrontation. Not a scratch on Mr. Bureles or his wife. They were untouched.

Mr. Bureles doesn't have the benefit of law enforcement training, backup officers, or time. He fended off Laquan McDonald with a cell. phone and a fistful of rocks. Mr. Bureles and his wife, they are faced with a far worse threat from Laquan McDonald than

the defendant was. And he had none of the training or the resources that were available to Jason Van Dyke.

How about Officer McElligott walking down 40th Street for a three, four, maybe five-block distance. He and Laquan are on the sidewalk and off the sidewalk. Later when they try to cut him off, Laquan hits the squad, popping the tire and hitting the windshield. Officer McElligott told you that Laquan's 10 to 15 feet away from him. Face to face with Laquan. Laquan has that exact same knife in his hand. He says Laquan is non-responsive. He says Laquan is mumbling.

Officer McElligott is alone on the street without the nine other officers that are going to show up with Jason Van Dyke and surround Laquan. That situation is even more confrontational than what Jason Van Dyke faced when he shot Laquan on Pulaski.

McElligott doesn't shoot. He doesn't shoot because it wasn't necessary. He was buying time. Calling for backup. Calling for a taser. McElligott was in nearly the exact same situation as Jason Van Dyke, probably worse. McElligott buys time, waits for the taser and he continues to follow Laquan.

But the last couple weeks we've been talking about what was necessary during this entire trial.

This encounter demonstrates exactly why it wasn't necessary to shoot Laquan McDonald. No matter how loudly or dramatically Mr. Herbert argues, this proves it was not necessary to shoot Laquan McDonald. Jason Van Dyke, far more resources available to him. Officer McElligott, he exercised patience. Jason Van Dyke chose not to and he instead used his gun.

The knife, the distance, the defiance, and the look in the eyes. Those are the four things defendant himself told you are the reasons he said it was necessary to shoot and kill Laquan McDonald.

Officer McElligott faced the exact same four things. Laquan McDonald wasn't trying to attack anyone that night. He was demonstrating his intent and his desire to avoid confrontation at every stage. That guy in the Burger King, remember him on the video standing outside the car with the hood up? Pointing Laquan out to the police as they were arriving and turning off of Pulaski into the Burger King parking lot? Did Laquan threaten him in any way? What is necessary for that guy to avoid harm, to avoid this rage and rampage that we heard about but haven't seen from the actual witnesses? What was necessary from that guy on the side of the street by the Burger King to fend off

Laquan? That's it. (Pointing).

How about Becerra and Velez in the squad on Pulaski as they drive north and approach Laquan. Laquan shows the knife, he's right next to the squad. Does he attack the squad? Or does he turn and walk away. Even defendant's own animation, this slick video that they prepared, these red lines, their own video shows Laquan walking away from the police at every opportunity on 40th, in the Burger King, on Pulaski, when he's walking southbound on Pulaski and Jason Van Dyke is walking northbound towards him. Laquan is walking away. Why? Why did Jason Van Dyke ignore each and every one of those signals? Of avoidance?

Maybe because he was intent on shooting Laquan even before he arrived.

You now know that Jason Van Dyke was already asking why someone didn't shoot Laquan McDonald before he even arrived on the scene. Before he made any attempt to assess the situation himself. He made the decision to shoot as soon as he heard Laquan was defying the orders to stop and drop the knife.

He chose not to wait and see how other police officers who were already on the scene, some for minutes, how they were handling the situation. He and

Officer Walsh his partner, they went there to stop Laquan McDonald just as Officer Walsh told you when he walked in here and testified from that witness stand. I want you to think about that for a moment.

Walsh and the defendant driving to the scene together. The defendant asks his partner why someone didn't shoot him and then Walsh coming in here on the witness stand and telling you that someone needed to stop Laquan McDonald. Someone needed to arrest Laquan McDonald.

Not stop him with a hail of gunfire. That's not the self defense. That is not fear for personal safety. That's the defendant coming in and shooting this kid because Laquan McDonald was not respecting the authority of the Chicago Police Department and the orders to stop and drop the knife.

The decision to fire that first shot was completely unnecessary. When defendant took that first shot the following officers were already on the scene: Gaffney and McElligott. Becerra and Velez. Fontaine and Viramontes. Mondragon and Sebastian. And of course the defendant and his partner Walsh. Ten armed police officers in five separate squad cars and two more, Ivankovich and his partner Jose Torres 25 seconds

away with a taser. A taser that the defendant knew was called and on its way.

Jason Van Dyke chose to ignore all of his other options and he made the decision to use deadly force. He had the option to use his and these other five squads to barricade and hem in Laquan McDonald. He had the option to bump Laquan McDonald with the front of one of those squad cars, try and knock him down. He had the option to hit him with the car door as they drove past him. He had the option of clicking on that radio that's attached to his shirt collar to find out where the status, where that taser was.

He had the option to wait for that taser. Let them use the taser on Laquan. And of course he had the option of time. Gaffney and McElligott, they gave him nearly ten minutes of time and consideration and assessment. Jason Van Dyke gave him six seconds. From the time Jason Van Dyke got the call, he set out on a collision course with Laquan McDonald. And began shooting Laquan as Laquan tried to walk past him and once again tried to avoid the police.

Defendant chose, he made a conscious decision to ignore every one of those other options. He created the confrontation. Then he began to empty every bullet

from his gun into the body of Laquan McDonald.

Let's talk about another decision that Jason Van Dyke should have made but instead, he let his partner and his gun make it for him. It should have been to stop shooting when he assessed and determined that Laquan McDonald was on the ground. Jason Van Dyke chose not to stop. Instead, he chose to shoot some more.

Laquan McDonald was knocked down almost instantly. At that point any threat was completely extinguished. Yet the defendant chooses to continue to shoot for 12.6 more seconds. He continued to shoot into a completely vulnerable and defenseless young man who was twitching from each time Van Dyke pulled the trigger and pumped another bullet into his body.

How is that reasonable and necessary? At this point Laquan is on the ground, he's completely vulnerable and could not conceivably be a threat to anyone. We always agreed that Laquan McDonald needed to be arrested that night.

THE COURT: Seven minutes, Mr. McMahon.

MR. McMAHON: At this point, Laquan has hit the ground. What was necessary to accomplish the arrest is an ambulance and a really good surgeon. Not more

bullets that sap that desperately-needed blood out of his bullet-riddled body.

When that shooting ended that night is where the story starts to change. Because almost immediately there's an attempt to change the narrative and exaggerate Laquan McDonald's actions and protect the defendant.

Judge Gaughan is going to inform you about judging the credibility and believability of the witnesses. I want to talk about just a couple here. Let me start with Leticia Velez. Mr. Herbert talked about her for a minute. You remember her. She's the officer who argued with her partner about whether she wanted to go get a meal instead of responding to a call for assistance from another officer.

The one who walked to the front of her car unprotected when she said she thought Laquan was reaching for a gun. I have got four words for her. She is a disgrace.

Officer Walsh, Van Dyke's partner, he gave a dramatic re-enactment of what he said Laquan did as they approached. Walsh gets off the witness stand few feet from you as far as I am here now. He hunched his back, swung the knife, gave this deadly stare. Is that

on the video? Defendant doesn't even say that himself when he takes the witness stand, when he testified. None of that is supported by any of this independent video or even the animation that they create with this guy from California.

Walsh's actions on the scene that night, they speak louder than his words in this courtroom. Look at his action. That flinch tells you everything you need to know. That flinch means surprise. That flinch means it was unexpected, that surprise at gunfire because there wasn't a deadly threat.

Let's talk about the independent evidence for a moment. Dash cam video and testimony in this courtroom, they show a pattern of avoidance in the truck yard past the food depository on Pulaski. Uncontested evidence that Jason Van Dyke shot Laquan McDonald 16 times, hitting him each and every time. Causing bodily harm and damage, blood loss that caused his death.

Every medical expert that looked at this case wrote in his or her opinion that Laquan McDonald died of multiple gunshot wounds and that it's impossible to sequence the order of gunshots.

Dr. Means who actually performed the autopsy.

Dr. Maskowski, the expert from the United States Department of Defense. Conferred, consulted and wrote a consulting report.

Then Dr. Arunkumar, the director and chief medical examiner of the Cook County Medical Examiner's Office. The busiest and most experienced medical examiner's office in the country when it comes to gunshot wounds. Gave you clear and direct testimony. Each and every gunshot wound bled. That the gunshots were so close in time to each other that every one of the shots would have caused blood loss. That his death was caused by a combination of the massive damage to his body and blood loss from each gunshot wound.

Here's what the other unpaid witnesses said about Laquan McDonald's medical condition. Officer Murphy from the Cook County Sheriff's Department. He's the one that walked up to Laquan McDonald, bent over, was closest to him. He heard him breathing, he heard him gasping, he saw blood flowing from his body. It's hard to watch. But that video shows blood flowing from his body pooling in a one by one foot diameter pool around Laquan's body and running down the street towards the curb.

Paramedic Smith, who came and testified

Laquan had a pulse, he had blood pressure. He had it on the scene and in the ambulance. He lost it on the way to the hospital.

Van Dyke wants you to believe that Laquan McDonald was alive and trying to get up and therefore, he continued to be a threat and he was therefore justified in all these other gunshots when Laquan was on the ground. But somehow Dr. Teas wants to come in and say it doesn't matter. He was dead. He was as good as dead. It doesn't even fit with any of the other witnesses who were on the scene.

You heard from father and son, Jose Xavier Torres. Concerned citizens. No bias or prejudice, no connection to the police, no connection to the prosecution, no connection to the defense. Their only interest is that justice be served. They saw Laquan walking on Pulaski. Surrounded by police. Walking away from the police without any threatening actions. When the defendant shot and killed him.

THE COURT: Two minutes.

MR. McMAHON: What was his reaction? Why the F are they still shooting him.

The defendant has committed serious crimes and we must hold him accountable like we hold every

other citizen accountable. When he shot the first time it was completely unnecessary. Laquan went down, Van Dyke saw this. He told you he had tunnel vision. Before he fired that first shot he was predisposed to shooting Laquan McDonald before he even arrived.

Jason Van Dyke shot Laquan McDonald for walking past him and ignoring his commands to stop and drop the knife. Even that biased, self-serving animation shows the indefensible acts of murdering Laquan McDonald. His own animation. Shows a murder. And five counts of aggravated battery with a firearm and it ends early.

You know Laquan hits the ground hard and fast after it ends. And you know what happens after they end the video. It's Jason Van Dyke firing bullets, ripping into the flesh of Laquan McDonald 16 times. That's not justified, that's not necessary. That's first degree murder.

THE COURT: Thank you, Mr. McMahon.

Ladies and gentlemen, the arguments have been completed and I now will instruct you as to the law that applies to this case.

Members of the jury, the evidence and arguments in this case have been completed and I now

will instruct you as to the law. The law that applies to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

You are not to concern yourselves with possible punishment or sentence for the offense charged during your deliberations. It is the function of the trial judge to determine the sentence, should there be a verdict of guilty.

Neither sympathy nor prejudice should influence you. You should not be influenced by any person's race, color, religion or national ancestry, gender or sexual orientation.

From time to time it has been the duty of this court to rule on the admissibility of the evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained. You should disregard testimony and exhibits which this court has refused or

stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which this court has received. You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant the same manner as you judge the testimony of any other witness.

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

Those of you who took notes during the trial may use your notes to refresh your memory during jury deliberations. Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes. When you are discharged from further service in this case your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty.

Under the law, a person charged with first degree murder may be found one, not guilty of first degree murder or two, guilty of second degree murder or three -- I'm sorry, I have to read this again.

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found one, not guilty of first degree murder, or two, guilty of first degree murder or three, guilty of second degree murder.

The defendant is also charged with the offenses of aggravated battery with a firearm. The defendant has pleaded not guilty to those charges.

The defendant is also charged with the offense of official misconduct. The defendant has pleaded not guilty to that charge.

The State has also alleged that during the commission of the offense of first degree murder, the defendant personally discharged a firearm that proximately caused death to another person. The defendant has denied the allegation.

The charges against the defendant in this case are contained in a document called the indictment. This document is the formal method of charging the

defendant and placing the defendant on trial. It is not any evidence against the defendant. The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and it is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he's guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

Defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and it is not overcome unless from all the evidence in this case, you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt

that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder and not guilty of first degree murder. In deciding whether a mitigating factor is present you should consider all the evidence bearing on this question.

The phrase preponderance of the evidence means whether considering all the evidence in this case, the proposition on which the defendant has the burden of proof is more probably true than not true.

The State has also alleged that during the commission of the offense of first degree murder the defendant personally discharged a firearm that proximately caused death to another person. The defendant is presumed to be innocent of this allegation. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the allegation is proven.

The State has the burden of proving the

allegation beyond a reasonable doubt and this burden remains on the State throughout the case. The defendant is not required to prove the -- I'm sorry. The defendant is not required to disprove the allegation.

Circumstantial evidence is proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

You have before you evidence that the defendant made statements relating to the offenses charged in the indictment. It is for you to determine whether the defendant made the statements and if so, what weight should be given to the statements.

In determining the weight to be given to a statement, you should consider all the circumstances under which it was made.

It is proper for an attorney to interview or attempt to interview a witness for purposes of learning the testimony the witness will give. However, the law does not require a witness to speak to an attorney before testifying.

The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for a limited purpose of deciding the weight to be given to the testimony you heard from the witness in this courtroom. However, you may consider a witness' earlier inconsistent statement as evidence without this limitation when the statement was made under oath at a trial, hearing or proceeding, or the statement narrates, describes or explains an event or condition the witness had personal knowledge of and the witness acknowledged under oath that he made the statement.

It is for you to determine whether the witness made the earlier statement and if so, what weight should be given to that statement.

In determining the weight to be given to an earlier statement, you should consider all the circumstances under which it was made.

In this case the State must prove beyond a reasonable doubt the proposition that the defendant was not justified in using the force which he used. You have heard testimony of Laquan McDonald's alleged prior

acts of violence. It is for you to determine whether Laquan McDonald committed those acts. If you determine that Laquan McDonald committed those acts, you may consider that evidence in deciding whether the State has proved beyond a reasonable doubt that the defendant was not justified in using the force which he used.

An electronic recording has been admitted into evidence. In addition to the electronic recording, you are being given a transcript of the electronic recording. The transcript only represents what the transcriber believes what is said on the electronic recording, and merely serves as an aid when you listen to the electronic recording. The electronic recording and not the transcript is the evidence. If you perceive a conflict between the electronic recording and the transcript, the electronic recording controls.

The term public employee means a person other than a public officer who is authorized to perform any official function on behalf of and is paid by the State or any of its political subdivisions.

A person is considered to personally discharge a firearm when he while armed with a firearm, knowingly fires a firearm causing the ammunition

projectile to be forcefully expelled from the firearm.

The word firearm means any device by whatever name known, which is designed to expel a projectile or projectiles by action of an explosion, expansion of gas or escape of gas.

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in use of any force which he reasonably believes to be necessary to effect the arrest or defend himself and/or another from bodily harm while making the arrest.

However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent one, death or great bodily harm to himself or another; or two, the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted aggravated assault which involves the infliction or threatened infliction of great bodily harm. Or three, the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by using a deadly weapon or otherwise indicates that he will endanger

human life or inflict great bodily harm unless arrested without delay.

The phrase reasonably believes or reasonably believes means that a person concerned acting as a reasonable person, believes the described facts exist.

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing of the defendant -- at the time of the killing, the defendant believes that circumstances exist which would justify the deadly force he uses, but his beliefs that such circumstances exist is unreasonable.

In order for you to find the acts of the defendant caused the death of Laquan McDonald, the State must prove beyond a reasonable doubt that the defendant's acts were a contributing cause of death and the death did not result from a cause unconnected to the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Force which is likely to cause death or great bodily harm includes firing of a firearm in the direction of a person to be arrested. Even though there's no intent exists to kill or inflict great

bodily harm.

A person commits the offense of first degree murder when he kills an individual without lawful justification if in performing the acts which caused the death, he intended to kill or do great bodily harm to that individual, or he knows that such acts would cause death to that individual, or he knows that such acts creates a strong probability of death or great bodily harm to that individual.

To sustain the charge of first degree murder or the charge of second degree murder, the State must prove the following proposition. First proposition. That the defendant performed the acts which caused the death of Laquan McDonald and second proposition, that when the defendant did so, he intended to kill or do great bodily harm to Laquan McDonald or, he knew that such acts would cause death to Laquan McDonald or he knew that such acts created a strong probability of death or great bodily harm to Laquan McDonald.

And third proposition, that the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, your

deliberations on these charges should end and you should return a verdict of not guilty to first degree murder.

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder. You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proven beyond a reasonable doubt each of the previously-stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean you must be persuaded considering all the evidence in this case that it's more probably true than not true that the following mitigating factor is present.

That the defendant at the time he performed

the acts which caused the death of Laquan McDonald believed the circumstances to be such that they justified deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that the mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

A person commits the offense of aggravated battery with a firearm when he by means of discharging a firearm, intentionally causes injury to another person. A public employee commits the offense of official misconduct when his official -- when in his official capacity, he knowingly performs an act which

he knows is forbidden by law to perform.

To sustain the charge of official misconduct, the State must prove the following propositions. First proposition, that the defendant was a public employee and second proposition, that in his official capacity the defendant knowingly performed an act which he knew he was forbidden to perform and third proposition, that the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Could I have the attorneys over here for a second, please.

(Discussion had off the record).

THE COURT: Ladies and gentlemen, these are the propositions that are necessary to find, sustain the charge of aggravated battery with a firearm.

To sustain the charge of aggravated battery with a firearm, State must prove the following

propositions. First proposition, that the defendant intentionally caused injury to another person and second proposition, that the defendant did so by discharging a firearm and third proposition, that the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Ladies and gentlemen, when you retire to the juryroom you first will elect one of your members as your foreperson. She or he will preside during your deliberations on your verdict. Your agreement on a verdict must be unanimous, your verdict must be in writing and signed by all of you, including your foreperson. The defendant is charged with the offense of first degree murder.

Under the law, a person charged with first degree murder may be found one, not guilty of first degree murder or two, guilty of first degree murder or

three, guilty of second degree murder. Accordingly, you will be provided three verdict forms; not guilty of first degree murder, guilty of first degree murder, and guilty of second degree murder. From these three verdict forms you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offenses of aggravated battery with a firearm, 16 counts. You'll receive two forms of verdict as to each count. You will be provided with both a not guilty of aggravated battery with a firearm and a guilty of aggravated battery with a firearm as to each count. From these two verdict forms you should select the one verdict form that reflects your verdict pertaining to the charge of aggravated battery with a firearm as I have stated. You should not write on, at all on the other verdict form pertaining to the charge of aggravated battery with a firearm.

The defendant is also charged with the offense of official misconduct. You will receive two forms of verdict as to this charge. You will be provided with both a not guilty of official misconduct

and a guilty of official misconduct form of verdict. From these two verdict forms you should select the one verdict form that reflects your verdict pertaining to the charge of official misconduct and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of official misconduct.

The State has also alleged that during the commission of the offense of first degree murder, the defendant personally discharged a firearm that proximately caused death to another person. If you find the defendant is not guilty of the offense of first degree murder, you should not consider the State's additional allegation regarding the offense of first degree murder. If you find the defendant is guilty of first degree murder, you should then go on with your deliberations to decide whether the State has proven beyond a reasonable doubt the allegation that during the commission of the offense of first degree murder, the defendant personally discharged a firearm that proximately caused death to another person.

Accordingly, you will be provided with two verdict forms. We the jury find the allegation that the defendant personally discharged a firearm that

proximately caused death to another person was not proven. And we the jury find the defendant personally discharged a firearm that proximately caused death to another person was proven. From these two verdict forms you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other verdict form. Sign only one of these verdict forms.

Your agreement on a verdict as to the allegations must be unanimous, your verdict must be in writing and signed by all of you, including your foreperson.

Could I have the attorneys over here, please.

(Discussion had off the record).

THE COURT: Ladies and gentlemen, at this time I am now going to read the verdict forms.

We the jury find the defendant Jason Van Dyke, not guilty of first degree murder.

We the jury find the defendant Jason Van Dyke, guilty of first degree murder.

We the jury find the defendant Jason Van Dyke, guilty of second degree murder.

We the jury find the allegation that during the commission of the offense of first degree murder,

the defendant personally discharged a firearm that proximately caused death to another person was not proven.

We the jury find the allegation that during the commission of the offense of first degree murder, the defendant personally discharged a firearm that proximately caused death to another person was proven.

Ladies and gentlemen, these are the aggravated battery with a firearm verdict forms.

We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm. This pertains to the first shot.

We the jury find the defendant Jason Van Dyke guilty of aggravated battery with a firearm. This pertains to the first shot.

This pertains to the second shot. We the jury find the defendant Jason Van Dyke not guilty of aggravated battery with a firearm.

This pertains to the second shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the third shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again this pertains to the third shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the fourth shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

This is the fourth shot also. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the fifth shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again the fifth shot, we the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the sixth shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

This pertains to the sixth shot also. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the seventh shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

This pertains to the seventh shot also. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the eighth shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

This pertains to the eighth shot also. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

This pertains to the ninth shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again pertaining to the ninth shot. We the jury find defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

Pertaining to the tenth shot. We the jury find defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again the tenth shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

The 11th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again pertaining to the 11th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

Pertaining to the 12th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again the 12th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

To the 13th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again the 13th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

As to the 14th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again pertaining to the 14th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

As to the 15th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again pertaining to the 15th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

Pertaining to the 16th shot. We the jury find the defendant Jason Van Dyke, not guilty of aggravated battery with a firearm.

Again pertaining to the 16th shot. We the jury find the defendant Jason Van Dyke, guilty of aggravated battery with a firearm.

Next two jury verdicts are we the jury find the defendant Jason Van Dyke, not guilty of official misconduct. And we the jury find the defendant Jason Van Dyke, guilty of official misconduct.

Jessica, at this time will you please get the juror number 252, 253, 254, 255, 256, take them back to the juryroom to retrieve their personal belongings.

THE COURT: Okay. At this time will you swear our deputies.

(Deputies sworn in).

THE COURT: Jessica, take our wonderful people back to the juryroom, please.

(Whereupon, the following proceedings were held out of the presence of the jury)

THE COURT: You are the alternates so you're not being dismissed. What I'd like to do, you can't discuss this case in case you're called back as a member of the jury. What we will have to do is I will admonish or tell the rest of the jury they have to start deliberations all over again. Right now we'd like you to have a seat right here in the jury box.

Can I have the attorneys over here one more time.

(Discussion had off the record).

THE COURT: At this time what I'm going to do. There's an agreement preserving the arguments for exhibits that have been moved into evidence.

I want you to both defense and prosecution take a look at those exhibits. If there's no objection other than what you have already made, please give those exhibits to my deputy and then what will happen is we have a computer, will just have the evidentiary materials on there and none other, is that correct?

MR. McMAHON: Yes, judge.

THE COURT: Jessica will explain to the jury how to use the computer and how to use the display.

Is the handgun going back?

MR. McMAHON: No, judge.

THE COURT: If there's no objections to jury instructions, you can give those to Jessica, too, and she will bring them back.

At this time would our wonderful people who are our alternates, nobody leaves the courtroom right now. Take our people over to the other area. Nobody can talk to the alternates.

MR. WEILER: We have one issue. What's going back to the jury. You remember the rate of fire videos, the demonstration. It's State's position those were demonstrative and should not go back to the jury. The defense is taking the position they are real evidence and should go back to the jury. We need a ruling and if theirs goes back, obviously we will ask for ours to go back.

THE COURT: You confused me. First of all rate of fire, that was done by Scott Patterson?

MR. WEILER: Correct.

THE COURT: Who's objecting?

MR. WEILER: There's three videos. It's our objection, State's objection that they should not go back to the jury because they are demonstrative.

THE COURT: Did you produce them as demonstrative evidence and that was the ruling when they were shown?

MR. WEILER: That was our purpose, yes.
THE COURT: What does the transcript say?
MR. WEILER: I'd have to look.
MR. HERBERT: I know we --
THE COURT: No, this is not -- go look at the transcripts.
Ladies and gentlemen in the courtroom, you're more than welcome to stay but at this time if you want to leave, you can leave.
(Short recess taken).
THE COURT: Let me see the attorneys, please. I have to give one more instruction. They will take you back over there.
(Whereupon, the following proceedings were held in the presence of the jury)
THE COURT: Ladies and gentlemen of the jury, I have to read one additional instruction. That I had not read before. It is as follows:
THE CLERK: Jason Van Dyke.
THE COURT: To sustain the allegation made in connection with the offense of first degree murder, the State must prove the following propositions. That during the commission of the offense of first degree

murder, the defendant personally discharged a firearm. A person is considered to have personally discharged a firearm when he while armed with a firearm, knowingly, intentionally fired the firearm causing ammunition projectile to be forcibly expelled from the firearm.

If you find from your consideration of all the evidence that the above proposition has been proven beyond a reasonable doubt, then you should sign the verdict form finding the allegation was proven.

If you find from your consideration of all the evidence that the above proposition has not been proven beyond a reasonable doubt, then you should sign the verdict form finding the allegation was not proven.

Thank you. Take our wonderful people back to the juryroom.

(Whereupon, the following proceedings were held out of the presence of the jury)

THE COURT: All right. At this time I like the attorneys to come up here. Short recess, please.

(Short recess taken)

(Whereupon, the following proceedings were held in the presence of the jury)

THE CLERK: Jason Van Dyke

THE COURT: Good morning, ladies and gentlemen. Again I have to read a corrected instruction.

So let the record reflect that our alternates are here and our members of our jury are here. And the attorneys are here and Mr. Van Dyke.

To sustain the allegation made in connection with the offense of first degree murder, the State must prove the following proposition. That during the commission of the offense of first degree murder, the defendant personally discharged a firearm that proximately caused death to another person.

A person is considered to have personally discharged a firearm when he while armed with a firearm, knowingly and intentionally fired the firearm, causing the ammunition projectile to be forcefully expelled from the firearm.

If you find from your consideration of all the evidence that the above propositions have been proven beyond a reasonable doubt, then you should sign the verdict form finding the allegation was proven.

If you find from your consideration of all of the evidence that the above proposition has not been proven beyond a reasonable doubt, then you should sign

the verdict form finding the allegation was not proven. Thank you. Take our wonderful people back to their assigned place.

(Whereupon, the following proceedings were held out of the presence of the jury)

THE COURT: What about the whether it was demonstrative or not.

MS. WENDT: We have a transcript. You did enter it into evidence.

MR. WEILER: I agree, they were entered into evidence. They can go back.

THE COURT: Quickly look at the instructions. Hearing no objections, we will send them right back with the jury. So thank you very much. Good. Court's in recess at this time.

(Whereupon, deliberations began at approximately 1:00 p.m. and a change of court reporters occurred.)

THE COURT: All right. Court's back in session. please remain seated.

THE CLERK: Jason Van Dyke.

THE COURT: All right. We have the State here; is that correct?

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

We, Paul O'Connor and Kristen M. Parrilli, Official Court Reporters for the Circuit Court of Cook County, Illinois, Judicial Circuit of Illinois, do hereby certify that we reported in shorthand the proceedings had on the hearing in the above-entitled cause; that we thereafter caused the foregoing to be transcribed into computer-aided transcription, which we hereby certify to be a true and accurate transcript of the proceedings had before the HONORABLE VINCENT M. GAUGHAN, Judge of said court.

_____
PAUL O'CONNOR , CSR
KRISTEN M. PARRILLI, CSR, RPR
CSR No. 084-004723
Official Court Reporter
Circuit Court of Cook County
County Department
Criminal Division

Dated this 16th day
of October, A.D., 2018.

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
v.
JASON VAN DYKE,
Defendant.
No. 17-CR-04286-01

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the [!ATTORNEY10], one of the Judges of said Division, on the 5th day of October, 2018.

APPEARANCES:

HON. JOSEPH H. McMAHON,
State's Attorney of Kane County,
Court-Appointed Special Prosecutor, by
MR. JOSEPH M. CULLEN, and
MS. JODY P. GLEASON, and
MS. MARILYN HITE ROSS, and
MR. DANIEL H. WEILER,
Assistant State's Attorneys,
on behalf of the People;

GLORIA M. SCHUELKE, CSR, RPR
Official Court Reporter IV
2650 S. California - 4C02
Chicago, Illinois 60608
Illinois CSR License No. 084-001886

APPEARANCES: (Continued)

HERBERT LAW FIRM, by
MR. DANIEL Q. HERBERT, and
MS. TAMMY L. WENDT, and
MR. RANDY RUECKERT,
on behalf of the Defendant.

(The following proceedings were had in open court out of the presence and hearing of the Jury:)

THE COURT: Please, remain seated.

Court's back in session.

Call the case, please.

THE CLERK: Yes, Jason Van Dyke.

THE COURT: Okay. Good. Thank you, James.

All right. Will the attorneys state their names, please.

MR. McMAHON: Good morning, Judge, Joe McMahon for the People of the State of Illinois.

MR. HERBERT: Dan Herbert for Jason Van Dyke.

THE COURT: All right. At this time, we were supposed to have some indication about a credible threat?

MR. HERBERT: Yes.

THE COURT: Why Mr. Van Dyke had just left this courtroom, without letting anybody know.

All right. What's the credible threat?

MR. HERBERT: The credible threat is, two of his Daughters experienced threats at school. His younger --

THE COURT: No, no, you don't define the word that

you define by using the word.

What is: You consider a threat?

MR. HERBERT: Well, I don't think it's just me that would just consider it, Judge; but his oldest Daughter --

THE COURT: All right. We're doing this, again. All right. We'll take a short recess.

I'm not asking you. I'm not asking the public. Do you want me to take your guy in custody?

MR. HERBERT: No, I don't.

THE COURT: Well, then, give me an answer when I ask you for something.

MR. HERBERT: I'm trying to.

THE COURT: You're not trying to, all right?

What was the threat?

MR. HERBERT: The threat was kids -- not kids, high school students were walking around the school --

THE COURT: High school students are kids.

MR. HERBERT: Okay. High school kids were walking around the school, saying which one is Jason Van Dyke's Daughter, because we are going to get her at school.

So, that wasn't enough. So, they --

THE COURT: Who was the witness to this?

MR. HERBERT: The school, for one.

THE COURT: So, you're going to bring the building in?

Come on.

MR. HERBERT: Judge, this is a real threat. I mean, I don't know --

THE COURT: You're not making sense the way you're talking like this.

MR. HERBERT: The school thought it was a threat, so they pulled the Daughter into the Police room, because not only did they start saying they're going to attack his Daughter, then they start passing out pictures so that all of these kids could find out who his Daughter was to attack her.

So, yeah, I think that's a threat, Judge; and he --

THE COURT: Who did they isolate as --

MR. HERBERT: I don't know. I don't know if they've done any investigation. A police report's been made. He's scared to death for his kids.

THE COURT: What time -- excuse me, what time was this threat made?

MR. HERBERT: What time was it made?

THE DEFENDANT: Between 1:00 and 1:30.

THE COURT: And what time did you leave the

building here?

Where's -- I want people out here, unless they're on vacation, all right?

THE DEFENDANT: It was around 1:30, 1:45.

THE COURT: Did you know about this threat when you left the building?

THE DEFENDANT: As soon as my Dad got through his car, he notified me, because he's the one --

THE COURT: Your Dad was driving you away from the building, is that correct?

THE DEFENDANT: No, no, sir.

THE COURT: Well, then, what does your Dad got to do with you leaving the building?

Who are you leaving the building with?

THE DEFENDANT: I -- I'm trying to explain, sir.

My Dad received a Voice Mail from the school, on a phone call --

THE COURT: Listen to me, I'm asking you what time you left the building?

I don't want --

THE DEFENDANT: Between 1:30 and 1:45, sir.

THE COURT: And what time did you get this notification of this threat?

THE DEFENDANT: Immediately.

THE COURT: Look, show me -- turn around and take a look at the clock.

Where on the clock does it say immediately?

THE DEFENDANT: It was right at the same time I was leaving the building, sir.

THE COURT: Stop, yeah, take a breath, you're right. That's good. All right.

And you didn't note -- did you notify Mr. Herbert?

THE DEFENDANT: I -- no, I did not, sir.

THE COURT: All right. All right. This is a very serious case, all right, as you know.

All right. Certainly, these things, you know, have to be addressed; but you don't do this by yourself, all right.

So, this time, I'm going to let it go.

All right. Do you have the transcript for the Jury?

MR. McMAHON: I do, Judge. I have five copies of --

THE COURT: Who's going to be handing -- where's -- all right.

Now, where is Amy?

THE DEPUTY: She's in there with them right now.

THE COURT: Okay. Come on up here, please.

All right. Then, Mr. Herbert, you have seen the transcripts?

MR. HERBERT: Yes.

THE COURT: And they're good to go?

MR. HERBERT: Yes.

THE COURT: And this is the transcripts from Officer Walsh?

MR. McMAHON: Yes, sir.

THE COURT: All right. Now, here's the next thing, all right. I'm not going to go through this, again, all right.

So, I'm going to order you to stay in this building, Mr. Herbert, so that you can consult with your client.

If there's any further questions, you're the lead attorney. You're the person in charge. So, we can answer any questions of the Jury, all right?

MR. HERBERT: That's fine, Judge.

I just have to go to my car to get some stuff.

THE COURT: Oh, absolutely; and if you want, there's room back there and the table back there, if you have to do work that you feel you can't do out

here.

All right. So, we're in recess at this time, until the Jury comes back.

(Brief recess.)

THE COURT: All right. Court's back in session. Please, remain seated.

Where's the State?

THE DEPUTY: She just called them. They're on their way.

THE COURT: Okay. From now on, when we get a note from the Jury, all right, I want you to start calling the lawyers immediately, okay?

Tell Amy that, too, please.

And tell Amy I need the other note.

Do you have the other note?

THE DEPUTY: I'm sorry, Judge.

THE COURT: And we have the laptop here?

THE DEPUTY: Yes.

THE COURT: Okay. Good. As soon as the attorneys get here, we will discuss that.

THE DEPUTY: Okay.

THE COURT: Amy, hang out here, too, please.

THE DEPUTY: I will.

THE COURT: All right. Call the case, please.

THE CLERK: Jason Van Dyke.

THE COURT: All right. Can I have the attorneys approach, please.

All right. First off, we have a request from one of the alternates. She wants to be able -- her laptop has been sequestered, also, away from her.

She wants to know if she can use her laptop to send out an office notification, and that's the only -- what she's going to do.

MR. HERBERT: That's fine with me.

MR. McMAHON: That's fine.

THE COURT: All right. Good.

Okay. Thank you.

Now, we have another note from the Jury.

You know, here's the thing, why don't we make a couple of copies. Let me give that to the attorneys, so they can have some.

It's a -- either or type thing. So, it's not too complicated, even though it looks that way.

What I'll do is, I'll read it; and then I'll give you both copies, and then consult with your client, and then get together, and we'll see what we're going to do with it.

See if it's legible. If it isn't, then, I'll

have Toni make a copy on her printer.

All right. Here's what the Jury requests:

This is on considering of the 16 counts of aggravated battery with a firearm.

Are we to consider counts as, A, how the shots are numbered on the Medical Examiner's chart; or, B, the simple number of shots fired; and it's by the Foreperson of the Jury.

All right. The name of the Foreperson is on there. So, I'm ordering you -- which I have the utmost respect for your integrity -- just not to disclose the name of the Foreperson.

All right. So, do you want to consider -- you want to consult with your client?

MR. McMAHON: Yes, Judge, I do.

THE COURT: And, Joe?

All right. Do you want to consult --

MR. HERBERT: Yes, I will.

THE COURT: All right. There will be a short recess at this time.

(Brief recess.)

THE COURT: All right. Court's back in session. Please, remain seated.

Do we have a full complement?

All right. Call everybody in from the hall.

Thank you very much.

All right. Call the case, please.

THE CLERK: Jason Van Dyke.

THE COURT: All right. Mr. McMahon, what's your suggestion?

Again, Mr. Van Dyke is present here with his attorneys.

MR. HERBERT: Yes.

THE COURT: Thank you.

MR. McMAHON: Judge, my suggestion is that the answer is, B, simple number of shots fired. That's based on the language in the Indictment. That's consistent with the testimony of the -- of the Medical Examiner pathologist, really from all the witnesses.

That's the only -- the answer that is consistent with both the Indictment and the testimony that has come in.

THE COURT: Mr. Herbert?

MR. HERBERT: I would object to clarifying this question for them.

We have already argued about the confusing nature of the 16 counts of aggravated battery. So, if -- if the Jury's having problems with it, welcome to

our world; but I don't think it's fair to -- to --

THE COURT: And to be consistent, you also wanted a Jury instruction that if they found Mr. Van Dyke not guilty on one of the aggravated battery counts, then, they should find him not guilty -- then, I should direct that they find him not guilty on all the others.

So, to be consistent, you don't want to make any reply?

MR. HERBERT: Correct, that Jury instruction was denied.

THE COURT: Yeah, right.

All right. This is a -- not a matter of law; but it's almost like a hybrid; and just in fairness to the Jury, the -- I think both pathologists testified that they could not determine which bullet entered or the order in which the bullets entered into Laquan McDonald.

So, this is not directing them one way or another. It's just the simple number of shots fired.

So, I'm going to say, consider answer B, over the defense's objection, to be consistent with the previous arguments.

MR. HERBERT: Okay.

THE COURT: What I'll do is, prepare the note back

to the Jury; and then I'll read it to you, okay?

MR. McMAHON: Judge, do you want the photocopy of the Juror's instruction back?

THE COURT: Oh, yeah.

Dan, could I get the question back, please.

MR. HERBERT: Yes.

THE COURT: Thank you. That way for security purposes.

MR. HERBERT: Judge, do you mind if I take a picture of it?

THE COURT: I'll give it to you later, you know, after they come back, certainly.

MR. HERBERT: No, that's fine, Judge.

Judge, do you need us any more?

THE COURT: Well, no, Dan, I just want to read my --

MR. HERBERT: Oh, I'm sorry.

THE COURT: -- direction to them.

All right. We have the attorneys present. Mr. Van Dyke is present with his attorneys.

Here's what I'm going to -- over defense's objection.

Dear Jury, consider Paragraph B, period.

Please, continue to deliberate.

Thank you.

All right. John, could you take this back.

Thank you very much.

All right. We're in recess at this time.

(Brief recess.)

THE COURT: All right. Court's back in session. Please, remain seated.

All right. Where are our people?

THE DEPUTY: I'm right here.

THE COURT: All right. Court's in session.

You start talking, you're going to find yourself in trouble.

All right. Court's back in session. Go ahead.

THE DEPUTY: All rise.

THE COURT: Thank you.

All right. At this time, Toni, call the case, please.

THE CLERK: Jason Van Dyke.

THE COURT: All right. The attorneys can stay where they're at. I'm just making an announcement.

The Jury has reached a verdict, all right.

I'm not going to announce the verdict until, approximately, 1:45 p.m.

Jessica, what time did the Jury come back?

THE DEPUTY: At, approximately, 12:32, Judge.

THE COURT: All right. That's for the media. That's good. All right.

So, everybody back in here for the verdict. Thank you very much.

And one more thing, excuse me, before you leave, all right?

I am going to have security up here. These wonderful people -- and I'm going to announce it, again -- took all this time out of their day-to-day activities, meaning our Jury.

They're -- you know, they fulfilled their job as a citizen of Cook County; and there's a lot of things that have gone on in their life. I don't want anybody to second-guess them.

There aren't going to be no -- nobody yelling. Nobody -- no matter which side you're on, or which way you like the verdict, nobody will be allowed to make any outbursts or anything else like that.

At 1:45 a.m. -- p.m., we will have enough Sheriffs in this courtroom. If you do act up, I guarantee you, I'm going to arrest you, all right.

So -- but I do want you to stay. That's the

primary thing, and I want you to look into your hearts and control your emotion, and I know this isn't going to be easy for either side.

So, please, do that.

Thank you. See you all at 1:45 p.m.

(Brief recess.)

THE COURT: All right. Court's back in session. Please, remain seated.

Thank you very much for standing up, all right.

I want our three alternates to come on up here, please; and then, Ted -- all right. Call the case, please.

THE CLERK: Jason Van Dyke.

THE COURT: I just don't want you on video, okay. So, they're going to video the audience.

I really appreciate everything you've done. You're fantastic. You're my Brother and Sister Judges.

Why don't you have a seat.

Thank you.

All right. Ladies and Gentlemen, our Jury has reached a verdict.

You have seen the TV camera taking the images in the outer part of the courtroom, and that was at my

direction.

If there is any outward bursts or anything else like this, any disruption of this Court, as you can see, my Sheriffs are around the inner part of the courtroom. You will be arrested immediately and taken into custody.

The reason -- and let me give you the reasons for this, too.

We have these wonderful people, and our alternates here, who have taken the time out of their life; and we all know just, when you come back from a small vacation or some kind of work trip, how we have to catch up; and they have to catch up; and they've done things -- and this is not the easiest decisions to make in the world.

So, I don't want anybody second-guessing them. They've done an outstanding job. We all have to be proud of their accomplishment as citizens of Cook County.

So, again, what I want you to do is, look into your heart; and if you can withstand the verdict, please, stay; but if you think you can't, I want you to leave, because there will be zero tolerance at this time, because I'm not going to have these people

disrespected; and thank you, ma'am, I appreciate that.

All right. And anybody else?

All right. I know this isn't going to be easy. So, I'm, you know, asking you, again, to look into your heart. If you think you're not capable of this, then, please, leave; and we'll let you back in after the verdict.

All right. Are we all ready?

And I want to -- all right.

What I want to do, too, is, we've had members from the media, both broadcast and press journalists. They've just been fantastic. Everybody's been really outstanding.

The reporting on this has been very important, because we need transparency, and especially in a case like this; and I really want to compliment the media chairs. They've just been great. They've been very cooperative.

We had a great session the other day, with the two Jurors -- the alternate Jurors that were excused and were allowed, you know, to have the interview with them.

I'm going to see if we can get another interview going with the rest of the Jurors and with

our wonderful alternates here.

So, again, thank you very much. I appreciate your interest; and again, thank you for the press. You've been outstanding.

All right. Bring the Jury out, please.

THE DEPUTY: All rise for the Jury.

(The following proceedings were had in open court in the presence and hearing of the Jury:)

THE COURT: We good?

Okay. Thank you.

Will everybody, please, be seated.

Will the Foreperson, please, rise.

Has the Jury reached verdicts?

THE FOREPERSON: Yes, we have.

THE COURT: Thank you very much.

Could you give Jessica the Jury verdict forms and just have a seat. I appreciate that.

I like the Jury, you're wearing, like, necklaces. Fantastic. That's good.

Ladies and Gentlemen, let me explain certain things, so you'll understand the verdicts a little bit better.

All right. The charges in this case were

first degree murder, 16 counts of aggravated battery, one count of official misconduct.

There also -- the defense had asked for the instructions and the Jury verdict form on second degree murder, all right. Let me explain the process, here.

Before anybody can get the second degree murder, the State must prove each and every elements of first degree murder. There's no bypassing that and going directly to second degree murder.

As pointed out by one of our wonderful Professors, Professor Kling who's in the audience, during his lectures, second degree murder is a combination of first degree murder, plus a mitigating factor. It is not really technically a lesser included offense, because it demands another set of proof, which would be the proof by the defense or the Defendant going forward by a preponderance of the evidence.

So, with this understanding, will you, please, read the verdicts.

THE CLERK: Yes.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of second degree murder.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 1st

shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 2nd shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 3rd shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 4th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 5th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 6th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 7th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 8th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 9th

shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 10th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 11th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 12th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of a aggravated battery with a firearm, 13th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 14th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 15th shot.

We, the Jury, find the Defendant, Jason Van Dyke, guilty of aggravated battery with a firearm, 16th shot.

We, the Jury, find the Defendant, Jason Van Dyke, not guilty of official misconduct.

12 signatures.

THE COURT: At this time, Mr. Herbert?

MR. HERBERT: Judge, we will not poll the Jury.

THE COURT: All right. Can I have the attorneys over here for a second, please.

(Discussion held off the record.)

THE COURT: Thank you.

Mr. Herbert?

MR. HERBERT: Your Honor, at this time, we would ask to poll the Jury.

THE COURT: Ladies and Gentlemen, I know this is, you know, a new experience for you; but when anybody has been convicted of a criminal offense in the State of Illinois by a Jury Trial, the person that has been convicted, has an absolute right to poll the Jury.

This was a remedy decided by our Illinois Supreme Court; and the purpose of this is, in case somebody was forced to sign a Jury verdict form in the Jury room; and this gave that individual the -- you know, the opportunity to be in the public, and say, no, this wasn't my verdict form.

So, it's an absolute right.

So, the question will be:

Was this then and is this now your verdict?

Meaning, was that then, in the Jury room; and is this now your verdict?

So, at this time, Toni?

THE CLERK: Yes.

Juror 240, were those then and are these now your verdict?

JUROR 240: Yes.

THE CLERK: Juror 241, were those then and are these now your verdict?

JUROR 241: Yes.

THE CLERK: Juror 242, were these then and are these now your verdict?

JUROR 242: Yes.

THE CLERK: Juror 243, were those then and are these now your verdict?

JUROR 243: Yes.

THE CLERK: Juror 244, were those then and are these now your verdict?

JUROR 244: Yes.

THE CLERK: Juror 245, were those then and are these now your verdict?

JUROR 245: Yes.

THE COURT: Juror 246, were those then and are these now your verdict?

JUROR 246: Yes.
THE CLERK: Juror 247, were those then and are these now your verdict?
JUROR 247: Yes.
THE COURT: Juror 248, were these then and are these now your verdict?
JUROR 248: Yes.
THE COURT: Juror 249, were those then and are these now your verdict?
JUROR 249: Yes.
THE CLERK: Juror 250, were those then and are these now your verdict?
JUROR 250: Yes.
THE COURT: And Juror 251, were those then and are these now your verdict?
JUROR 251: Yes.
THE CLERK: Thank you.
THE COURT: Okay. John and Jessica, would you take our wonderful people of the Jury, and our three wonderful alternates, back to the Jury room, please.
THE DEPUTY: All rise for the Jury.
(The following proceedings were had in open court out of the presence and hearing of the Jury:)

THE COURT: Ladies and Gentlemen, will you, please, be seated.

At this time, I would like to express my appreciation for everybody who participated in this Trial, and also for the public that are here today.

I know -- you know, depending on what side that you really favored, it wasn't easy -- excuse me -- for this verdict to come in, and I appreciate what -- your restraint that you used to today.

It makes me very proud to be a citizen of the City of Chicago and also the County of Cook.

So, thank you.

At this time, State?

MR. McMAHON: Your Honor, at this time, the State would move to revoke Defendant Jason Van Dyke's bond.

THE COURT: Mr. Herbert?

MR. HERBERT: Judge, we would ask that the -- the Motion for the State to be denied.

We would ask that, in light of the fact that my client is not found guilty of first degree murder, we would ask for a bond review.

In the alternative, we would ask if we could come back next week for a bond review.

THE COURT: Mr. McMahon?

MR. McMAHON: Judge, I would object to that. The Defendant's been convicted of 16 counts of aggravated battery with a firearm.

Those are Class X felonies. The mandatory minimum sentence is 6 years in the Illinois Department of Corrections, with a maximum of 30 years on each count.

Given that he now stands before this Court as a convicted felon, we would ask that you revoke his bond.

THE COURT: All right. Bail will be revoked.

All right. I'm going to order a Presentence Investigation.

All right. Order of Court, October 31st, 2018, all right.

All right. Thank you very much.

I appreciate that.

Court's in recess.

THE DEPUTY: All rise.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS )
)
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, GLORIA M. SCHUELKE, CSR, RPR, Official Court Reporter of the Circuit Court of Cook County, County Department, Criminal Division, do hereby certify that I reported in shorthand the proceedings had at the hearing in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript taken to the best of my ability of the Report of Proceedings had before the [!ATTORNEY10], Judge of said court.

Gloria M Schuelke CSR, RPR

Official Court Reporter
Illinois CSR License No. 084-001886

Dated this 9th of October, 2018.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**CRIMINAL DIVISION**



PEOPLE OF THE STATE OF ILLINOIS, )
)
Plaintiff, )
)
v. ) Gen. No. 17 CR 4286
)
JASON VAN DYKE, )
)
Defendant, )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that the undersigned has on January 14, 2019, caused to be filed in the Office of the Circuit Court of Cook County, Illinois, a copy of the above and foregoing People's Sentencing Memorandum of Law in the above-captioned case and hereby serve you with copy of the same.

**PROOF OF SERVICE**

The undersigned hereby certifies that he served a true and correct copy of the above and foregoing People's Sentencing Memorandum of Law to the individual listed below:

Attorney Daniel Q. Herbert
The Law Offices of Daniel Q. Herbert
206 S. Jefferson, Suite 100
Chicago, IL 60661
dan.herbert@danherbertlaw.com

by hand on January 14, 2019.

Kane County State's Attorney's Office
37W777 Route 38, Suite 300
St. Charles, IL 60175

**IN THE CIRCUIT COURT OF COOK COUNTY**
**COUNTY DEPARTMENT-CRIMINAL DIVISION**

| | | |
|---|---|---|
| **PEOPLE OF THE STATE OF ILLINOIS,** | ) | |
| **Respondent** | ) | |
| **vs.** | ) | **CASE NO. 17 CR 4286** |
| | ) | |
| **JASON VAN DYKE,** | ) | |
| **Petitioner** | ) | |

## PEOPLE'S SENTENCING MEMORANDUM OF LAW

The following memorandum of law addresses the governing relevant statutes and case law which potentially apply to this case:

1. Defendant was charged with first degree murder, official misconduct, and sixteen separate counts of aggravated battery with a firearm. The aggravated battery with a firearm charges apportioned each act of firing defendant's weapon as a separate crime based on the order in which it was fired (e.g., first shot, second shot, third shot, etc.)
2. The jury convicted defendant of second degree murder and all sixteen counts of aggravated battery with a firearm.
3. Under 720 ILCS 5/9-2, second degree murder is a Class 1 felony, with a sentencing range of not less than 4 years and not more than 20 years. 730 ILCS 5/5-4.5-30. Second degree murder is a potentially probationable offense. A sentence for second degree murder is eligible for day-for-day good conduct credit. 730 ILCS 5/3-6-3(a)(2.1)
4. Under 720 ILCS 5/12-3.05(e)(1), aggravated battery with a firearm is a Class X felony, subject to a sentencing range of 6-30 years. 730 ILCS 5/5-4.5-25(a). Aggravated battery with a firearm is non-probationable. 730 ILCS 5/5-4.5-25(d). A sentence for aggravated

battery with a firearm is subject to truth-in-sentencing which requires that defendant receive no more than 4.5 days of good conduct credit for each month of his or her sentence of imprisonment. 730 ILCS 5/3-6-3(a)(2)(ii). An aggravated battery with a firearm conviction may not be reduced to less than 85% of the sentence imposed thereon. 730 ILCS 5/3-6-3(4.7)(i).

5. The People maintain that the one-act one-crime doctrine does not apply to this case, and as such, a sentence must be imposed on each of the sixteen aggravated battery with a firearm verdicts reached by the jury.

6. The one-act one-crime doctrine disallows multiple convictions to be carved from a single physical act. *People v. King*, 66 Ill.2d 551, 566 (1977). In *King*, the Court defined an "Act" as: "any overt or outward manifestation which will support a different offense." *Id.* A person can be guilty of multiple offenses even when a common act is part of both offenses. *People v. Rodriguez*, 169 Ill.2d 183, 188 (1996). When the one-act, one-crime doctrine applies, the less serious offense must be vacated. *People v. Lee*, 213 Ill.2d 218, 226 (2004).

7. In *People v. Crespo*, 203 Ill.2d 335, (2001), the Illinois Supreme Court articulated the test for determining when the one act one crime doctrine applies. Crespo was convicted of the first degree murder of the mother of his child, and armed violence, as well as two counts of aggravated battery based on stabbing the victim's daughter three times. He was sentenced to 75 years for the murder, 30 years for the armed violence, and 5 years for the aggravated battery, after finding that the two counts of aggravated battery merged. All sentences ran concurrently. *Crespo*, 203 Ill.2d at 336-338.

On appeal, defendant claimed that his aggravated battery conviction could not stand because it was based on the same single act as the armed violence charge. *Id.* at 337. While

the Court found that each stab wound could, in theory, support a separate offense, that they did not, because "this is not the theory under which the State charged defendant, nor does it conform to the way the State presented and argued the case to the jury." 203 Ill.2d at 342. The failure of the indictment to apportion the offenses according to the various stab wounds, and the prosecutor's portrayal of defendant's conduct as a single attack disallowed the two aggravated battery convictions to stand. *Id.* at 345. The Court held:

> Here, the State specifically argued to the jury that the three stab wounds constituted great bodily harm. The State never argued that only one of the stab wounds would be sufficient to sustain this charge. Again, it must be pointed out that the State *could have,* under our case law, charged the crime that way, and *could have* argued the case to the jury that way. The State chose not to do so, and this court cannot allow the State to change its theory of the case on appeal. It is possible that, although the jury found that all three stab wounds together constituted great bodily harm, the jury would not have considered any one of the stab wounds individually to constitute great bodily harm. This court will not invade the province of the jury and decide this question of fact. *People v. Crespo*, 203 Ill. 2d at 344.

8. Thereafter, in *People v. Bishop*, 218 Ill.2d 232, 246 (2006), the Illinois Supreme Court reiterated that multiple convictions are proper where the State consistently treats the defendant's acts as separate in the indictment and at trial. See also, *Guide to Sentencing and Bond Hearings in Illinois*, O'Brien, Darren (2018 Ed.), p. 31: Ch. IX Merger (The One Act One Crime Rule) ("Prosecutorial intent, as it is reflected in the charging document, is a significant factor in determining whether the defendant's conduct constituted separate acts capable of supporting multiple convictions.")

9. Applying the foregoing authority to the facts of this case, defendant must be sentenced on all sixteen counts of aggravated battery with a firearm where: (1) the indictments charged defendant with firing sixteen separate shots, (2) each charge was supported with evidence pertaining to each individual shot and the resulting damage and blood loss caused by it (See, Exhibit A, attached), (3) the People consistently maintained in opening statement and closing arguments that defendant committed sixteen separate acts of aggravated battery with a firearm, all of which contributed to the death of Laquan McDonald, and, (4) the jury was provided and signed 16 separate verdict forms for each separate shot fired.

10. Having established that defendant must be sentenced on all sixteen charges of aggravated battery with a firearm, the question arises as to whether a sentence should be imposed on the second degree murder charge. Resolution of such question requires consideration of the Illinois Supreme Court's holding in *People v. Lee*, 213 Ill.2d 218 (2004). In *Lee*, defendant was convicted of second degree murder and one count of aggravated battery with a firearm where he shot and killed one victim (Wile), and one count of aggravated battery with a firearm where he shot the second victim (Willis). The trial court sentenced defendant to 20 years for the second degree murder and 15 years for the aggravated battery with a firearm of Wile. 213 Ill.2d at 221. Defendant received a consecutive 18 year sentence for the aggravated battery charge of Willis.

11. On appeal, the Fourth District Appellate Court found that the one-act, one-crime doctrine barred convictions for both second degree murder and aggravated battery with a firearm. *People v Lee I,* 311 Ill. App. 3d 363 (4th Dist. 2000). Initially, the court found that defendant's convictions were based on separate acts where defendant shot the victim three times. 311 Ill. App. 3d at 369-370. The Court then determined that where multiple

convictions are based on multiple offenses, and some offenses are included offenses, that only the conviction and sentence for the offense with the highest sentence may stand because the rule against multiple convictions should inure to the State and not provide a windfall for defendants. *Id.* at 373

12. Defendant appealed and the Supreme Court issued a supervisory opinion directing the appellate court to vacate its judgment and reconsider. In its second published decision, the appellate court, relying on *People v. Crespo*, indicated that the State's failure to apportion the crimes among the three gunshots fired at Wile required that either the second degree murder conviction or aggravated battery with a firearm conviction be vacated. *People v. Lee II,* 343 Ill. App. 3d 431, 439 (4th Dist. 2003) The court vacated defendant's aggravated battery with a firearm conviction, again holding that where multiple convictions cannot stand under one-act, one-crime doctrine, that only the conviction and sentence for the offense with the highest sentence may stand because the rule against multiple convictions should inure to the State's benefit and not defendant's. *Id.* at 441.

13. The Illinois Supreme Court granted defendant leave to appeal. After noting that the State had conceded that the one-act one-crime doctrine applied to require that the less serious offense be vacated, the Court held that aggravated battery with a firearm is a more serious offense than second degree murder based on the legislative classification assigned each offense. *Id.* at 229-230. As such, the Court remanded the case to the appellate court to vacate the second degree murder conviction in favor of the aggravated battery with a firearm conviction. *Id.* at 230.

14. Application of *Lee* to this case divests this court of the ability to sentence defendant on the second degree murder verdict, to the exclusion of the aggravated battery with a firearm verdicts

because second degree murder is, as a matter of law, the lesser offense. See also, *Guide to Sentencing and Bond Hearings in Illinois*, O'Brien, Darren (2018 Ed.), p. 31: Ch. IX Merger (The One Act One Crime Rule) (citing *People v. Lee* as "holding that Aggravated Battery /Firearm is a higher class than 2nd Degree Murder involving the same victim and, therefore, only a sentence on the Aggravated Battery/Firearm is appropriate).

15. Consideration of whether defendant's aggravated battery convictions require the imposition of consecutive sentences properly begins with 730 ILCS 5/5-8-4(d)(1), found constitutional in *People v. Wagener*, 196 Ill.2d 269, 285-86 (2001). In pertinent part, it provides:

> Consecutive terms; mandatory. The court shall impose consecutive sentences in each of the following circumstances:
>
> (1) One of the offenses for which the defendant was convicted was **first degree murder or a Class X or Class 1 felony** and the defendant inflicted **severe bodily injury.**

16. The offenses described in 5/5-8-4(d)(1) are referred to as "triggering offenses" and are: "crimes of a singular nature, involving particularly serious invasions of the person." *People v. Curry*, 178 Ill.2d 509, 538 (1997). In *Curry*, the Illinois Supreme Court interpreted the consecutive sentencing statute as mandating that consecutive sentences be served prior to, and independent of, any sentences imposed for non-triggering offenses. *Id.* at 539.

17. Here, because the People apportioned the separate acts underlying each and every charge, and where aggravated battery with a firearm is a class X felony, there are 16 potential triggering offenses. The confluence of the mandatory consecutive sentence statute and the rule of law established in *People v. Lee* allows for the anomalous possibility of a minimum prison sentence of 96 years in the Illinois Department of Corrections (six years multiplied by sixteen counts of aggravated battery with a firearm). The People acknowledge both that Article 1, § 11 of the Illinois Constitution provides that "All penalties shall be determined

both according to the seriousness of the offense and with the objective or restoring the offender to useful citizenship" and that 720 ILCS 5/1-2(c) provides that the Criminal Code be construed to prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders. As such, the People maintain that prudence dictates that this Court also impose a sentence on the second degree murder verdict in this case to prevent the needless waste of judicial resources should the Supreme Court decide to revisit their previous holdings in *Lee* or *Crespo*.

18. For a potential triggering offense to result in the imposition of a consecutive sentence, however, the trial court must make an explicit finding of severe bodily injury. *People v. Alvarez*, 2016 IL App (2d) 140364, ¶ 24. The First District Appellate Court has held that "severe bodily injury" is not synonymous with "great bodily harm." *People v. Williams*, 335 Ill. App. 3d 596, 599-600 (1st Dist. 2002) ("Severe bodily injury" requires a degree of harm to the victim that is something more than that required to create the aggravated battery offense.") The trial court is in the best position to evaluate all of the relevant factors and determine whether the injury to the victim constitutes "severe bodily injury." *People v. Austin*, 328 Ill. App. 3d 798, 808-09 (2002). A trial court's finding of fact with respect to this issue is to be given great deference. *People v. Deleon*, 227 Ill.2d 322, 332 (2008).

19. It must also be noted, however, that extant precedent holds that the death of the victim of a triggering offense may constitute the "severe bodily injury" which requires the imposition of a consecutive sentence. *People v. Thompson*, 331 Ill. App. 3d 948, 956-57 (1st Dist. 2002); *People v. Carney*, 327 Ill. App. 3d 998, 1002 (1st Dist. 4th Div. 2002); *People v. Causey*, 341

Ill. App. 3d 759, 771-772 (1st Dist. 6th Div. 2003). See also, *Guide to Sentencing and Bond Hearings in Illinois*, O'Brien, Darren (2018 Ed.), p. 31: Ch. VII Consecutive Sentencing, ¶ 1(a) " 'Death' qualifies as 'severe bodily injury' sufficient to trigger consecutive sentencing."

20. Putting aside the extensive evidence presented by the People regarding each individual wound inflicted by defendant, defendant's own evidence conclusively established that at least two of the shots that defendant fired were fatal. On this basis alone, a finding of "severe bodily injury" necessarily follows. This would have the effect of making defendant subject to a minimum sentence of 18 years: 6 years for each triggering offense, to be served independent of and in addition to a 6 year minimum sentence on a non-triggering offense, with all offenses to be served at the rate of 85%.

21. Such position finds support in *People v. Stanford*, 2011 IL App (2d) 090420 ¶¶46-47, where the Appellate Court held that the trial court was required to impose consecutive sentences for defendant's armed violence and attempt murder convictions where multiple gunshots were apportioned as separate acts to support convictions for both charges. The Court held:

> The State's reference to defendant's firing multiple shots supported its argument that each separate, additional act of firing the gun lent credence to the conclusion that defendant had the intent to kill.
>
> In other words, the State did not treat the multiple shots as a single act; rather, it treated them as multiple, separate acts showing a single element of attempted murder.
>
> We also note that the State extensively questioned Pruneda [the victim] about each of his individual injuries. The trial court found that the "shooting of Pruneda, Silva, and Diaz arose from a series of closely related acts," and defendant does not dispute this finding. As we observed above, 17 of the 20 counts in the indictment expressly indicated a specific injury to a specific victim.

> With respect to Pruneda, defendant committed three separate acts: he shot Pruneda in the face (supporting count I for attempted murder); he shot Pruneda in the left ankle (supporting count XIII for armed violence); and he shot Pruneda in the right ankle (supporting count XIV for armed violence). The indictment was sufficient to put defendant on notice that the State was treating defendant's infliction of each gunshot wound as a separate act, and the State's case was consistent with that theory.

22. Additionally, where the evidence adduced at trial established that: (1) defendant fired sixteen bullets into the body of Laquan McDonald, first when Laquan was upright, and later, after "reassessing the situation" upon Laquan falling to the ground, (2) each and every shot caused bleeding, and, (3) each and every shot contributed to Laquan's death which resulted from multiple gunshot wounds, where he, essentially, bled to death, there is ample basis for this Court to make additional findings of "severe bodily injury."

23. A sampling of cases where gunshot wounds were found to cause severe bodily injury to require consecutive sentencing includes:

- *People v. Deleon*, 227 Ill.2d 322, 332-333 (2008) (victim shot through the chest qualifies as severe bodily injury even though victim was able to drive away from the scene, notice an ice cream truck surrounded by children, get himself to a nearby gas station and request help, collect the bullet from his sweater, and wait for the police to arrive.)
- *People v. Johnson*, 149 Ill.2d 118 , 128-129 (1992) (victim shot in the shoulder qualifies even though he walked out of the apartment where the shooting occurred, flagged down a passing motorist, told the driver there was a robbery and a shooting, and had the motorist drive him to a hospital.)
- *People v. Williams*, 335 Ill. App. 3d 596, 601 (1st Dist. 2002) (gunshot wound to victim's left arm resulting in emergency surgery and a 19-day stay in the hospital constitutes severe bodily injury, while through-and-through shots to victims' legs for which no

immediate medical attention was received required additional inquiry and findings by trial court.)

- *People v. Kelley*, 331 Ill. App. 3d 253, 260 (1st Dist. 2002)(victim shot twice in right arm, requiring hospitalization for three days constitutes severe bodily injury for imposition of consecutive sentence.)
- *People v. Austin*, 328 Ill. App. 3d 798, 807(1st Dist. 2002) (where overnight hospitalization required for victim who suffered gunshot to back and a graze on side of head, injuries were severe and warranted consecutive sentencing.)
- *People v. Amaya*, 321 Ill. App. 3d 923, 933 (2nd Dist. 2001) (where one victim shot in the stomach and another in the back and both required surgery, consecutive sentence proper.)
- *People v. Primm*, 319 Ill. App. 3d 411, 427 (1st Dist. 2000) (consecutive sentence required where victim shot in the back of left thigh and taken to the hospital).

24. A sampling of cases where gunshot wounds were not found to constitute severe bodily injury to justify the imposition of a consecutive sentence include:

- *People v Jones*, 323 Ill. App. 3d 451, 461 (1st Dist. 2001) (bullet graze to victim's right cheek bone requiring a band aid and nothing more did not constitute severe bodily injury)
- *People v. Rice*, 321 Ill. App. 3d 475, 486 (1st Dist. 2001) (trial court's refusal to impose consecutive sentencing affirmed where victim was only hospitalized for two days as a result of bullet wounds)
- *People v. Murray*, 312 Ill. App. 3d 685, 694 (1st Dist. 2000) (where gunshot wound caused a fracture to victim's big toes for which he was treated and released within 2 ½ hours, did not qualify as severe bodily injury)
- *People v. Durham*, 303 Ill. App. 3d 763, (1999) (gunshot injury to victim requiring no medical attention and described a small nick or cut" insufficient to constitute severe bodily injury for imposition of consecutive sentencing)
- *People v. Ruiz*, 312 Ill. App. 3d 49, 63 (1st Dist. 2000) (gunshot wound to officer's knee for which he did not seek medical treatment until after attending a police officer's roundtable meeting did not constitute severe bodily injury.)

25. Finally, under 730 ILCS 5/5-8-4(f), the maximum consecutive sentence that may be imposed for offenses committed as a part of a single course of conduct where there was no substantial change in the nature of the criminal objective is twice the maximum sentence authorized for the two most serious felonies. In this case, that would put the upper sentencing limit at 120 years in the Illinois Department of Corrections.

## CONCLUSION

For the foregoing reasons, the imposition of sentence in this matter should be guided by the following principles:

1. A sentence must be imposed for the offense of aggravated battery with a firearm because per Supreme Court edict, it is more serious than the offense of second degree murder.

2. A sentence of probation, which would deprecate the seriousness of the offense is unauthorized where aggravated battery with a firearm is a non-probationable offense.

3. A sentence must be imposed on each count of aggravated battery with a firearm based on: (a) the indictment, which charged sixteen separate acts, (b) the People's consistent articulated theory of the case, and, (c) the jury's sixteen verdicts.

4. Any count for which this Court makes a finding of severe bodily injury is subject to a mandatory consecutive sentence.

5. The mandatory supervised release period for class x offenses is three years (730 ILCS 5/5-4.25), while the mandatory supervised release period for class 1 offenses is two years (730 ILCS 5/5-4.5-30).

6. The interests of judicial economy would be best served by the imposition of a concurrent sentence on the charge of second degree murder.

RESPECTFULLY SUBMITTED,

People of the State of Illinois
Joseph H. McMahon
Special Prosecutor, Kane County State's Attorney

By: _____
Joseph H. McMahon

Date: _____

Joseph H. McMahon ARDC No. 6209481
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS<br>Plaintiff, | ) | |
| v. | ) | Case No. 17 CR 4286 |
| JASON VAN DYKE,<br>Defendant. | ) | |

## SENTENCING MEMORANDUM

Now comes defendant, Jason Van Dyke, by and through is attorneys, who present this memorandum in support of sentencing. Defendant states as follows:

### Procedural History

1. On October 5, 2018, a jury found defendant Jason Van Dyke ("Defendant") guilty of one count of second-degree murder and sixteen counts of aggravated battery with a firearm ("aggravated battery"). The jury found defendant not guilty of official misconduct. Defendant now appears before this Court for sentencing.

### Introduction

2. This Court must decide whether defendant should be sentenced to one count of second degree murder only, one or more counts of aggravated battery only, one count of both, or some combination thereof. Defendant's position is that his aggravated battery convictions merge into his conviction for second degree murder due to the one-act, one-crime doctrine. He requests that this Court sentence him to probation on his second degree murder conviction. He supports his positions below.

## ARGUMENT

**I. Jason Van Dyke's Convictions for Aggravated Battery with a Firearm And Second Degree Murder Murder Merge Pursuant to the One-act, One-Crime Doctrine Because Aggravated Battery is a Lesser Offense of Murder.**

3. The prosecution has consistently argued that charges of aggravated battery with a firearm are a lesser included offense to the charges of murder. The prosecution has also consistently argued that all sixteen shots fired by defendant caused Laquan McDonald's death. Under these circumstances, aggravated battery is a lesser included offense and the aggravated battery and second degree murder convictions merge under the one-act, one crime doctrine.

4. "The one-act, one-crime rule prohibits multiple convictions when the convictions are based on precisely the same physical act." *People v. Millsap*, 2012 IL App (4th) 110668, ¶18, 979 N.E.2d 1030. If it is determined that the defendant committed multiple acts, the court goes on to determine whether any of the offenses are lesser-included offenses. *People v. Nunez*, 236 Ill.2d 488, 925 N.E.2d 1083, 1086 (2010). In other words, the one-act, one-crime analysis involves two considerations: (1) "whether the defendant's conduct consisted of one physical act or separate physical acts"; and (2) "if the court concludes that the conduct consisted of separate acts, *** the court must determine whether any of those offenses are lesser-included offenses." *In re Rodney S.*, 402 Ill. App. 3d 272, 281-82, 932 N.E.2d 588, 597 (2010). The second consideration applies to this case and requires the offenses merge.

5. The prosecution's sentencing memorandum, recommending defendant be sentenced on aggravated battery counts, asserts that the one-act, one-crime does not apply to defendant's case simply because they charged him separately for each shot. (St. M.¶6, citing *People v. Crespo*, 203 Ill.2d 335, 788 N.E. 2d. 1117 (2001)). In so arguing, the prosecution only

looks to the first consideration under the doctrine, i.e. whether defendant's conduct consisted of one or separate physical acts, and ignores the second consideration all together. Defendant concedes that unlike the prosecution in *Crespo*, this prosecution team decided to charge him with each shot as a separate act and crime. As such, even though this offense contains "a series of closely related acts," that could qualify as one act under the doctrine, the way in which the prosecution charged the case indicates "that the State intended to treat the conduct of defendant as multiple acts." *Crespo*, 788 N.E.2d at 1123 (2001). For this reason, alone, the prosecution alleges that defendant cannot now argue that the multiple shots constituted one act. However, the *Crespo* decision is distinct from the present scenario because the *Crespo* court was not required to conduct the second-step analysis due to the fact that prosecution did not charge the *Crespo* defendant in the same way as the prosecution did here. *Crespo*, 788 N.E. 2d. at 1122-23. Thus, contrary to the prosecution's assertion, *Crespo* does not mandate that this Court sentence defendant separately for every "act."[1] Under *Crespo*, the next step this Court is to determine if all sixteen separate aggravated battery acts are lesser-included crimes of second degree murder. *In re Rodney S.*, 402 Ill. App. 3d at 281-82. The prosecution has previously argued, and this Court agreed, that the sixteen counts of aggravated battery were lesser included offenses.

6. Prior to trial, the prosecution unambiguously argued that the aggravated battery counts were lesser included offenses of first degree murder. (Exhibit 1; State's Response to Defendant's Motion to Dismiss the Indictment, p. 3, stating, "[T]he aggravated battery charges in the second indictment in this case are lesser included offenses of the first degree murder charges

[1] The *Crespo* court also never faced the question of whether or not the sentence now argued by the prosecution violated the proportionate penalties clause. See Sec. c, ¶23-24 *infra,* for defendant's proportionate penalties argument.

filed in the indictment in 15CR20622 and therefore are not "new and additional" charges that would be subject to compulsory joinder."). The prosecution is judicially estopped from arguing otherwise now. *See Seymour v. Collins*, 2015 IL 118432, ¶47 (holding that judicial estoppel prevents a party from changing position when the party has "(1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) succeeded in the first proceeding and received some benefit").

7. At the time, this Court agreed with the prosecution's argument, holding, "If you look at the counts in the charging document here, it's 2, 4, and 6 of the indictment, basically what they charge, it says in the he without lawful justification, shot and killed Laquan McDonald while armed with a firearm, knowing that such acts created a strong probability of death or great bodily harm to Laquan McDonald. And causing great bodily harm is pled in Counts 2, 4, and 6. So the aggravated battery with a firearm is actually a lesser included offense of those counts. Therefore, the additional charges, the new 16 counts that have been added are not new and additional." (Exhibit 3; 11/6/17 hearing, p.6-8). Case law supports this Court's ruling that aggravated battery is a lesser included offense. See e.g., *People ex rel. Walker v. Pate*, 53 Ill.2d 485 (1973) (holding that "aggravated battery is a lesser included offense of attempted murder."); *People v. Temple*, 2014 IL App (1st) 111653, ¶ 93 (finding aggravated battery with a firearm a lesser included offense of attempt first degree murder). While the Court applied the charging instrument approach, as opposed to the abstract elements approach in making that decision, the analysis of this Court is nevertheless on point under the abstract elements test. A review of the trial evidence illustrates defendant's position.

8. During trial, the prosecution argued that the "undisputed" evidence was that all sixteen gunshot wounds were contributing factors in McDonald's death. To support this position, the prosecution presented the testimony of Dr. Ponni Arunkumar, who testified that McDonald died as a result of multiple gunshot wounds. In closing arguments, the prosecution cemented this point by noting that "it is undisputed....that every one of those shots contributed to his death. *Both* pathologists [Dr. Arunkumar and Dr. Teas] testified that Laquan died from multiple gunshot wounds," and "basically [] bled to death." (Exhibit 2; 10/4/18, p.16, emphasis added). Even now, the prosecution continues to maintain that the "sixteen separate acts of aggravated battery with of a firearm all...contributed to the death of Laquan Mcdonald." (St. M. ¶9). If all sixteen shots contributed to his death, as the prosecution has consistently argued, all sixteen shots are lesser included offenses of second degree murder. *See e.g., People v. O'Neal*, 66 N.E.3d 390, 401 (1st Dist. 2016) (noting that the State conceded throughout the case that every single shot defendant fired was aimed at, and intended for, the occupants of the van, and because "the same proof that the State used to support its intentional and strong-probability murder charges," defendant's conviction for felony murder based on the predicate offense of aggravated battery was improper). Put another way, was is impossible for defendant to commit first degree murder with a firearm without first committing aggravated battery with a firearm. *People v. Miller*, 238 Ill. 2d 161, 173-75 (holding that under the abstract elements test, one offense is a lesser included offense of the other when it is "impossible to commit the greater offense without necessarily committing the lesser offense.")

9. This Court's prior rulings, the prosecution's prior arguments and admissions, the facts of this case, the evidence from trial, and case law establish that the aggravated battery

counts are lesser included offenses of second-degree murder. As such, this Court must enter a sentence on either one count of aggravated battery with a firearm or one count of second degree murder. *People v. Powell*, 2017 IL App (1st) 150705-U, ¶¶39-42 (merging two counts of domestic battery into one count of aggravated domestic battery as lesser included offense, despite the fact that the two counts of domestic battery were charged as separate acts).

10. The question this Court must decide next is if the aggravated battery convictions merge into the conviction of second-degree murder or vice versa. Defendant submits that it is the former, and that this Court must sentence him on one count of second-degree murder.

## II. Jason Van Dyke Must Be Sentenced on One Count of Second Degree Murder Instead of One Count of Aggravated Battery.

11. As previously discussed, for sentencing purposes, the aggravated battery convictions in this case are a lesser included offense of murder. Defendant submits that second degree murder is also a greater offense, (first degree murder with a mitigating factor), so the aggravated battery convictions should merge into his conviction for second degree murder. A conclusion to the contrary would impermissibly eliminate second degree-murder as an offense in Illinois, which would violate the proportionate penalties and separation of powers clauses of the Illinois Constitution. Ill. Const. 1970, art. I sec. 11, and art. II, § 1.

### *a. The Sixteen Aggravated Battery Counts Merge into Second-Degree Murder Because First Degree Murder is the Greater Offense.*

12. As discussed in Section I, aggravated battery is a lesser included offense of first degree murder. In other words, first degree murder is the greater offense. Defendant submits that second degree murder is also a greater offense of aggravated battery. A conclusion to the

contrary would render defendant's conviction for second degree murder a nullity and contravene legislative intent.

13. Before the jury was able to convict defendant of second-degree murder in this case, the jury had to first find that the State had proven the elements of first-degree murder. *See People v. Staake*, 2017 IL 121755, ¶40 (2017) (noting that that "[t]he State must prove the elements of first degree murder..." before the jury can even consider second-degree murder.). As this Court read to the jurors, the instructions provided:

> "If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder and not guilty of first degree murder. In deciding whether a mitigating factor is present you should consider all the evidence bearing on this question." (10/04/2018, p. 85-86).

14. The next step, for the jurors, was to decide if there was a mitigating factor present warranting a conviction for second degree murder. *See People v. Manning*, 2018 IL 122081, ¶18 (2018) (commenting that second-degree murder is "first degree murder plus defendant's proof by a preponderance of the evidence that a mitigating factor is present.") This Court read the instruction to be:

> "A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if . . . at the time of the killing, the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable." (10/04/2018, at p. 91).

15. The verdict establishes that the jurors found a mitigating factor existed, i.e., defendant believed, unreasonably, that deadly force was necessary. The fact that the jury found a mitigating factor existed so as to not warrant a first degree murder conviction does not change the merger analysis. Instead, it supports defendant's argument that he should be sentenced to

second degree murder. It is well-settled that first degree is a greater offense than aggravated battery. Jurors found defendant guilty of first degree murder with the presence of a mitigating factor, i.e., second degree murder. As such, the presence of the mitigating factor should not punish defendant. Thus, when the jury took the first step and found defendant guilty of first-degree murder, the lesser included aggravated battery counts merged into first-degree murder even though the relative punishments prescribed by the legislature for second degree murder is less than that for aggravated battery with a firearm. *Agee*, 205 Ill.App.3d 146; *Pate*, 53 Ill. 2d 485.

***b. Sentencing Jason Van Dyke on the Aggravated Battery Counts is Improper Because It Would Effectively Eliminate Second Degree-Murder in Illinois.***

16. Where there is a violation of the one-act, one-crime rule, "[a] sentence should be imposed on the more serious offense and the less serious offense should be vacated." *People v. Artis*, 232 Ill. 2d 156, 170 (2009). In determining which offense is the more serious, a reviewing court generally compares the relative punishments prescribed by the legislature for each offense. *People v. Payne*, 2019 IL App (4th) 150972-U. The lesser classed offense generally merges into greater classed offense. *People v. Duszkewycz,* 189 N.E.2d 299, 301 (1963). However, this case presents this Court with a unique situation. As previously discussed, defendant maintains second degree murder is the greater offense due to the fact it is first degree murder with a mitigating factor. Yet aggravated battery with a firearm has a greater punishment than second degree murder, and it is the greater classed offense. Under these facts, sentencing defendant to aggravated battery would violate well-established law that prohibits sentencing schemes that effectively eliminate the offense of second-degree murder.

17. The jury found that defendant committed first degree murder, but he established by a preponderance of the evidence that he believed, albeit unreasonably, that he acted in self defense. Based on the finding of a mitigating factor, defendant's minimum sentence went from a minimum of 45-years imprisonment to possible sentence of probation. 720 ILCS 5/9-2; 730 ILCS 5/5-5-3(c)(2). Aggravated battery with a firearm requires a minimum sentence of 6 years and is not probationable (730 ILCS 5/5-4.5-25(a)). Agreeing with the prosecution's argument that the law requires a sentence on aggravated battery would render the jury's finding of the mitigating factor meaningless. The Illinois Supreme Court and Appellate Courts have repeatedly recognized such a practice is legally impermissible as such a result would effectively nullify the second degree murder statute. *See e.g., People v. Morgan*, 758 N.E.2d 813, 838 (2001); *People v. Drakeford*, 564 N.E.2d 792, 796-97 (1990); *People v Rosenthal*, 889 N.E. 2d 679 (2008); *People v. Space*, 2018 IL App. (1st) 150922; *People v. O'Neal*, 66 N.E.3d 390, 399 (1st Dist. 2016). A review of two of these cases, *People v. Drakeford*, 564 N.E.2d 792, 796-97 (1990) and *People v. Morgan*, 758 N.E.2d 813, 838 (2001, illustrates defendant's point.

18. In *Drakeford*, the Illinois Supreme Court considered whether a defendant could properly be sentenced on the Class X felony of armed violence predicated on aggravated battery, where the jury found defendant guilty of second-degree murder. The Court held that the sentence on the Class X felony of armed violence was improper. In doing so, the court opined that "if we were to hold that a defendant could be sentenced for armed violence predicated on aggravated battery where there was a simultaneous conviction for second degree murder arising out of the same act, we would render ineffective the second degree murder statute." *Id.* In fact, "...any time a defendant commits second degree murder based on an unreasonable belief of

self-defense, the defendant will also possess the intent or knowledge necessary for a conviction on aggravated battery causing great bodily harm. Thus, in the future, prosecutors will seek sentencing on the Class X armed violence predicated on aggravated battery conviction rather than on the Class 1 second degree murder conviction." *Id.* The Court held that such a "...result would effectively nullify the second degree murder statute." *Id.*

19. In *Morgan,* the Illinois Supreme Court faced the question of whether or not aggravated battery and aggravated discharge of a firearm were permissible predicate offenses for felony murder. The Court held neither offenses were. In so ruling, the Court agreed with the lower court that "...every shooting necessarily encompasses conduct constituting aggravated battery..." *Id.* In that regard, every shooting encompasses "great bodily harm, as well as conduct constituting aggravated discharge of a firearm, i.e., discharging a firearm in the direction of another." *Id.* Thus, under the sentencing scheme utilized by the prosecution, all fatal shootings could potentially "be charged as felony murder based upon aggravated battery and/or aggravated discharge of a firearm." *Id.* The result of such a scheme could "effectively eliminate the second-degree murder statute and also to eliminate the need for the State to prove an intentional or knowing killing in most murder cases." *Id.* As such, the Court concluded that in order to be a permissible predicate for felony murder "the predicate felony underlying a charge of felony murder must have an independent felonious purpose." *Id.* at 844. The First District and other appellate courts have consistently reaffirmed the reasoning in *Morgan. See e.g., People v Rosenthal,* 889 N.E. 2d 679 (2008); *People v. Space*, 2018 IL App. (1st) 150922.

20. Applying the reasoning of *Morgan* and *Drakeford*, all sixteen of the aggravated battery counts are inherent to the conviction for second-degree murder. Just as in *Morgan* and

*Drakeford*, sentencing defendant to aggravated battery would effectively nullify second-degree murder. Indeed, a sentence on any of the aggravated battery counts would create a system whereby the prosecution could effectively eliminate second-degree murder for defendants who shoot when in fear for their lives. In every prosecution for first-degree murder using a firearm, the prosecution could simply charge separate counts of aggravated battery with a firearm (or attempted murder), which would render a finding on second-degree murder a nullity. Not only that, but it would also render all mitigating factors found by the jury to be virtually meaningless, as a defendant could potentially receive a longer minimum sentence after being convicted of second-degree murder (and the accompanying Class X offense based upon the same acts) than the minimum sentence for first degree murder. The prosecution admits, "[t]he confluence of the mandatory consecutive sentence statute and the rule of law established in *People v. Lee* allows for the anomalous possibility of a minimum prison sentence of 96 years in the Illinois Department of Corrections." (St. M. ¶17). The legislature clearly did not intend such an anomalous result. The legislature enacted a specific sentencing scheme for second degree murder (probation or 4-20 years served at fifty percent). Sentencing defendant on the aggravated battery, which requires a minimum of six years at eighty-five percent renders that sentencing scheme a nullity. As such, sentencing defendant to one count aggravated battery (much less 16 counts) contravenes legislative intent and results in an unjust sentence. *See Manning*, 2018 IL 122081, ¶21 (stating that "in construing a statute, courts should presume that the legislature did not intend unjust consequences.")

21. Cases cited by the prosecution to support a sentence on any counts of aggravated battery, and not second degree murder, have not addressed this issue. (St. M. ¶¶10-17, citing

*Crespo* and *Lee*). In arguing defendant should be sentenced to consecutive counts of aggravated battery, the prosecution specifically relies on *People v. Lee*, 821 N.E. 2d 307 (2004). (St. M. ¶¶10-17). However, the defendant in *Lee* did not argue that sentencing him to aggravated battery nullified his second degree murder conviction. He did not need to put forth this argument because his 15-year sentence for aggravated battery was less than his 20-year sentence for second degree murder. For that reason, *Lee* does not control this Court's analysis. Defendant submits that if the *Lee* defendant had raised the arguments defendant now presents, as they did in *Morgan* and *Drakeford*, the Court would have reached a different conclusion, a fact supported by the decisions in *Rosenthal* and *Space*.

22. In sum, this Court must sentence defendant on his second degree murder conviction in order to not render that conviction a nullity. A conclusion to the contrary does not comport with the jury's verdict, legislative intent, or common sense.

***c. Sentencing Jason Van Dyke on the Aggravated Battery Counts Violates the Proportionate Penalties Clause.***

23. The prosecution acknowledges the possible outcome of this case, if this Court grants its argument, is that defendant's minimum sentence could be 96 years' imprisonment. To its credit, the prosecution also acknowledges such a sentencing scheme might violate the proportionate penalties clause of the Illinois Constitution. (St. M. ¶17). Defendant agrees. As such, the arguments advanced by the prosecution not only would render second degree murder a nullity but are also unconstitutional.

24. The proportionate penalties clause provides, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I sec. 11. Sentencing defendant to 96 years'

imprisonment on 16 counts aggravated battery, where the jury found defendant guilty of second degree murder, violates the proportionate penalties clause. Under such a sentencing scheme, defendant is, in essence, being penalized for requesting an instruction of second-degree murder. Had defendant been convicted of first-degree murder, it is unquestionable that the aggravated battery counts would have merged into first-degree murder conviction. The defendant's minimum sentence would have been 45 years' instead of 96. However, under the prosecution's approach, defendant would be subject to a 96-year minimum sentence because the jury found mitigating factors that lessened his culpability. Such a sentencing scheme is not in accordance with "the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I sec. 11.

***d. Sentencing Jason Van Dyke on the Aggravated Battery Counts Violates the Separation of Powers.***

25. Any sentencing scheme that sentences defendant on the aggravated battery counts violates the separation of powers, because it judicially eliminates the second-degree murder statute. The Illinois Legislature is the only body vested with the power to enact laws and eliminate them. Ill. Const. 1970, art. II, § 1; *People v. Peterson*, 2017 IL 120331 ¶29 (2017) ("The separation of powers clause of the Illinois Constitution provides that the 'legislative, executive and judicial branches are separate' and that '[n]o branch shall exercise powers properly belonging to another.'") As explained in Section II(b), sentencing defendant on the aggravated battery counts effectively eliminates second-degree murder. Consequently, if this Court sentenced defendant on the aggravated battery counts, it would result in the judiciary effectively exercising legislative power to eliminate second-degree murder.

## III. Jason Van Dyke Should Be Sentenced to Probation In Light of the Relevant Mitigating Factors and Lack of Aggravating Factors.

26. Defendant is a law abiding citizen who served almost 15 years as a Chicago Police Officer. Defendant has no criminal background. He is responsible for supporting two teenage children and his wife, and he is unlikely to reoffend. He was convicted of a crime that is unlikely to reoccur. And, as a police officer, he faces immense danger if he is imprisoned in the Illinois Department of Corrections. Given the unique circumstances of this case and the overwhelming evidence presented in mitigation, the appropriate sentence is a period of probation.

27. The Illinois Legislature, in enacting the second-degree murder statute and setting penalties for its violation, recognized that a wide range of circumstances might arise that could result in a defendant being convicted of second-degree murder. As a result, it classified second-degree murder as a Class 1 offense, and it authorized a sentencing range of four to twenty years' imprisonment. 720 ILCS 5/9-2; 730 ILCS 5/5-5-3(c)(2). The Legislature also, in recognizing that not all second-degree murders necessitated prison sentences, authorized a sentence of probation or conditional discharge. *Id.*

28. The legislature has also directed the courts to consider certain factors in mitigation in determining whether to withhold or minimize a penitentiary sentence. 730 ILCS 5/5-5-3.1. Almost all of the statutory mitigating factors apply to defendant and this incident. Only one of the legislative aggravating factors applies, physical harm. 730 ILCS 5/5-5-3.2. However, this Court cannot consider that factor in sentencing defendant because serious harm is inherent in the offense of second-degree murder. *See People v. Sanders*, 58 N.E.3d 661, 666 (3rd 2016) (remanding for a new sentencing hearing where the trial court relied on the fact that

"defendant's conduct caused or threatened serious harm, a factor inherent in the offense of first degree murder....").

29. Additionally, mitigation evidence in the form of testimony from the defendant's family, friends, and co-workers also supports the fact that defendant should receive a sentence of probation. *See People v. Harris,* 319 Ill. App.3d 534 (3rd Dist. 2001) (noting that a defendant convicted of second-degree murder in a shooting death was "sentenced to 48 months of probation, 364 days of periodic imprisonment, 364 days of electronic home detention, 100 hours of community service, and restitution of $7,652.95."); *People v. Swanson*, 211 Ill.App.3d 510 (1st Dist. 1991) (noting that a defendant convicted of second-degree murder in a strangling death was "sentenced to three years probation with 26 weekends in the Cook County jail."); *People v. Peoples*, 219 Ill.App.3d 703 (1st Dist. 1991) (noting a defendant was sentenced to four years of probation for second-degree murder).

30. A sentence of probation is also appropriate in this case in light of the fact that defendant is the primary provider for his wife and children. See e.g., *People v. Maldonado*, 240 Ill. App. 3d 470, 484-85 (1st Dist. 1992) (reducing defendant's sentence for first degree murder to the minimum sentence of 20 years' based, in part, on the fact that the defendant was the father of two small children). Furthermore, this Court must consider danger the defendant will face in custody as a result of his status of a police officer. This Court should consider that the greater danger defendant faces in custody does not serve the objective of the proportionate penalties clause, which is restoring defendant to useful citizenship. *See* Ill. Const. 1970, art. I sec. 11.

## CONCLUSION

For the reasons discussed, defendant requests that this Court sentence him on one count of second degree murder. In light of the overwhelming mitigating factors and the absence of aggravating factors, he asks that his Court sentence him to probation.

Respectfully Submitted,

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# EXHIBIT 1

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, CRIMINAL DIVISION**

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, | ) | |
| v. | ) | No. 17 CR 4286 |
| JASON VAN DYKE, Defendant. | ) | |

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT**

NOW COME the People of the State of Illinois, by JOSEPH H. McMAHON, Special Prosecutor and Kane County State's Attorney, and in response to Defendant's Motion to Dismiss the Indictment, state as follows:

1. That the defendant was indicted on December 15, 2015 with six counts of first degree murder and one count of official misconduct in 15CR20622. The indictment was initiated by the Cook County State's Attorney's Office.

2. That the allegations in the six counts of first degree murder all allege that the defendant shot and killed Laquan McDonald while armed with a firearm.

3. On August 4, 2016 Joseph H. McMahon was appointed as Special Prosecutor on the case.

4. On March 16, 2017 members of Special Prosecutor McMahon's trial team presented the case to the Grand Jury and received a true bill on six counts of first degree murder, sixteen counts of aggravated battery with a firearm, and one count of official misconduct. The six counts of first degree murder and one count of official misconduct were identical to the indictment returned in 15CR20622. This indictment superseded the indictment previously returned in 15CR20622.

5. On September 27, 2017 the defendant filed a motion to dismiss the new indictment claiming that the statutes governing speedy trial and compulsory joinder had been violated by the superseding indictment in 17CR4286.

**Argument**

In order to prevail in his claim, the defendant would need to show that both the statute governing compulsory joinder and the statute governing speedy trial were violated. The defendant can do neither.

**In This Case Aggravated Battery with a Firearm is a Lesser-Included Offense of First Degree Murder and therefore not Subject to Compulsory Joinder**

Citing *People v. Williams*, the defense claims under what is now commonly called the *Williams* rule that the sixteen counts of aggravated battery are new and additional charges and therefore any delay acquiesced to by the defense on the original indictment could not have been acquiesced to on the sixteen counts of aggravated battery. However, under a proper application of the *Williams* rule it becomes clear that the aggravated battery charges are not "new and additional".

> The rationale for the *Williams* rule is intended to ensure that a defendant had adequate notice of the subsequent charges to allow preparation of a defense. *Phipps*, 238 Ill.2d at 67, 342 Ill.Dec. 893, 933 N.E.2d at 1194. As a result, the *Williams* rule applies only when the subsequent charge filed by the State is 'new and additional,' thereby hindering the defendant's ability to prepare for trial on the subsequent charge. On the other hand, [i]f the original charging instrument gives a defendant adequate notice of the subsequent charges, the ability to prepare for trial on those charges is not hindered in any way. *Id.*

In *People v. Phipps* 342 Ill.Dec.893, the supreme court held "that the 'defendant could not have been surprised by the subsequent charges because they were essentially the same as the original ones.' " *Id.* at 70, 342 Ill.Dec. 893, 933 N.E.2d at 1195 (quoting *People v. Woodrum*, 223 Ill.2d 286, 301, 307 Ill.Dec. 605, 860 N.E.2d 259, 270 (2006)). In such circumstances, "the defendant may proceed to trial on the subsequent charges with adequate preparation instead of being forced to agree to further delay." *Id.* at 68, 342 Ill.Dec. 893, 933 N.E.2d at 1194. The "critical point" is "whether the original indictment gave defendant adequate notice to prepare his defense to the subsequent charge." *Id.* at 69, 342 Ill.Dec. 893, 933 N.E.2d at 1195. " *People v. Staake, 2016 Il App (4th) 140638.*

In *Staake,* the court determined that First Degree Murder is a less mitigated offense of Second Degree Murder and therefore not subject to compulsory joinder. Similarly, the aggravated battery charges in the second indictment in this case are lesser included offenses of the first degree murder charges filed in the indictment in 15CR20622 and therefore are not "new and additional" charges that would be subject to compulsory joinder.

In *People v. Kolton* 219 ill 2d. 353 at 361, the Illinois Supreme Court has adopted the charging document approach to determine whether an offense is a lesser-included offense of another offense holding:

> "The charging instrument approach looks to the allegations in the charging instrument to see whether the description of the greater offense contains a "broad foundation" or "main outline" of the lesser offense. Because the charging instrument provides the parties with a closed set of facts, both sides have notice of all possible lesser-included offenses so that they can plan their trial strategies accordingly. *Novak,* 163 Ill.2d at 113, 205 Ill.Dec. 471, 643 N.E.2d 762. Further, the charging instrument approach "tempers harsh mechanical theory with the facts of a particular case,"

"results in a broader range of possible lesser included offenses," and, thus, "supports the goal of more accurately conforming punishment to the crime actually committed." *Novak,* 163 Ill.2d at 113, 205 Ill.Dec. 471, 643 N.E.2d 762."

Both *Staake* and *Kolton* instruct courts to look at the original indictment to determine whether the new charges are a) new and additional and b) lesser-included. All of the original charges of first degree murder allege that the defendant shot and killed Laquan McDonald with a firearm. Exhibit 1. The sixteen counts of aggravated battery all allege that the defendant injured Laquan McDonald by means of discharge of a firearm. Exhibit 2. Therefore, all relevant counts in both indictments allege some type of injury caused by the defendant shooting Laquan McDonald, with death being the ultimate injury in the murder charges. It would be absurd to say that the defense could be adequately prepared to defend the charges that he shot and killed Laquan McDonald but would be unprepared to defend charges that he shot and injured Laquan McDonald. This is not trial by ambush, the aggravated battery charges are lesser-included offenses and are not "new and additional". On that basis alone the defendant's motion should be denied.

**The Speedy Trial Statute was not Violated in this Case**

Assuming, *arguendo*, that the sixteen counts of aggravated battery were "new and additional" and subject to compulsory joinder, the defense would still need to show that the State violated the defendant's right to a speedy-trial. This simply cannot be the case because the defendant never invoked his right to a speedy-trial by filing a written demand for speedy-trial after he was admitted to bail as required by the speedy-trial statute. Section 103-5(b) of the speedy-trial statute contains a 160-day speedy-trial right for a person released on bond or recognizance, and the period begins to run *only* when the accused files a written speedy-trial demand. *People v. Patterson,* 392 Ill. App. 3d 461, 465 (emphasis added). "If the compulsory-joinder rule applies, the multiple charges are subject to the same speedy-trial period, which begins to run when the demand for speedy trial is filed, even if some of the charges are brought at a later date." *People v.*

*Kazenko*, 2012 Ill. App. 3d. 110529. Unlike the cases cited by the defense in which the speedy trial right was triggered automatically based on the custodial status of the defendant or in which the defendant filed a written demand for speedy-trial, the speedy-trial clock never began to run on this case because the defendant failed to put the State on notice of his intention to invoke his right to a speedy-trial by the filing of a written demand as required by statute. Further, the defendant does not cite a single case wherein a defendant who was admitted to bail and failed to file a written demand for speedy-trial was found to be entitled to the relief requested by the defendant in this motion. Because the protections of the Speedy-Trial Act were never invoked by the defendant, the State did not violate his rights under that Act and the defendant's motion should also be denied for this reason.

WHEREFORE, the People of the State of Illinois respectfully requests that this Court deny Defendant's Motion to Dismiss the Indictment.

Dated:_____

RESPECTFULLY SUBMITTED,
People of the State of Illinois

By:_____
Joseph H. McMahon

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# EXHIBIT 2

just read to you and the three propositions, that's what we have to prove.

Now, we don't have to prove that all shots killed Laquan. You can find him guilty of first degree murder if you believe just one of the bullets killed him. However, we know from the evidence in this case that Laquan McDonald needed every drop of blood in his body. Why? Because the cause of death from gunshot wounds, basically he bled to death. So every one of those shots contributed to his death. They shortened his life. Maybe he would have lived a little bit longer if he hadn't been shot all of those times. And, you know, it's undisputed. Both pathologists testified that when the -- Laquan died from multiple gunshot wounds.

Now, the defendant is also charged with the offense of aggravated battery with a firearm. And the judge is going to read you this instruction. It's much shorter.

To sustain the charge of aggravated battery with a firearm, the State must prove the following proposition: That the defendant intentionally caused injury to another person. Second proposition: That the defendant did so by discharging a firearm. And,

# EXHIBIT 3

reporter, all right?

So what we have going today then will be the motions. Why don't we just take a short break? We don't have to go back, and then we'll being the proceedings for today.

There will be a short recess at this time.

(Whereupon the court took a brief recess.)

THE COURT: All right. Court is back in session.

Re-call the case of the People of the State of Illinois versus Jason Van Dyke.

THE CLERK: Sheet 8, re-calling Jason Van Dyke.

THE COURT: All right. This is for a ruling on the Defense's motion to dismiss the indictment.

There are two theories that were proposed. One based on compulsory joinder. The other one on the Speedy Trial Statute.

These are very distinctive and novel, not meaning, meaning I don't see anything in case law that really has addressed this particular problem here.

All right. As far as compulsory joinder the statute reads itself, if several offenses are known to the proper prosecuting officer at the time of the commencing of the prosecution and are within the

jurisdiction of a single court, they must be prosecuted in a single prosecution.

The Defense's theory is that the six counts of first degree murder and the one count of official misconduct was the charge, the basis of that, and then the aggravated battery with a firearm are new charges that have come in. The compulsory joinder from the case law says that it must be, these things must be prosecuted at the same time, and no new and additional charges can be added.

If you look at the counts in the charging document here, it's 2, 4, and 6 of the indictment, basically what they charge, it says in that he without lawful justification, shot and killed Laquan McDonald while armed with a firearm, knowing that such acts created a strong probability of death or great bodily harm to Laquan McDonald.

And causing great bodily harm is pled in Counts 2, 4, and 6. So the aggravated battery with a firearm is actually a lesser included offense of those counts. Therefore, the additional charges, the new 16 counts that have been added are not new and additional. There is a lesser included. The Compulsory Joinder Statute in my interpretation does not preclude lesser included offenses

from being charged later on, because if we're at trial, certainly in a bench trial, a judge would have the option of taking a look at all the lesser included offenses.

In a jury trial, if the evidence was present that those instructions, jury instructions should be given, they would be able to be given. So there is no violation of the Compulsory Joinder Statute.

As far as the Speedy Trial Statute, again, this is a very unique situation here where it would be impossible for somebody to -- the cases that were cited, there was a, about running the statute on speedy trial, were all cases where either the person was in custody or the Defense had filed a written demand.

In this case because the Defense is still in preparation, they have not filed a demand for trial, answering ready for trial on the six counts of first degree murder and the one count of official misconduct.

Therefore, it would be just theoretically impossible for the term to run on the lesser included offenses.

So I find that there is no violation of the Speedy Trial Statute. Therefore, the motion to dismiss the indictment is denied.

All right. Could I have the attorneys approach

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs. ) No. 17 CR 04286 (01)
JASON VAN DYKE,
Defendant.

REPORT OF PROCEEDINGS had before the HONORABLE VINCENT M. GAUGHAN, Judge of said Court, on the 18th day of January, A.D., 2019.

APPEARANCES:
HON. JOSEPH McMAHON,
State's Attorney of Kane County,
Court-Appointed Special Prosecutor, and
MR. JOSEPH CULLEN,
MS. JODY GLEASON,
MS. MARILYN HITE ROSS,
MR. DANIEL WEILER,
Assistant Special Prosecutors,
On behalf of the People;

MR. DANIEL HERBERT,
MS. TAMMY WENDT,
MR. DARREN O'BRIEN,
MS. JENNIFER BLAGG,
Attorneys at Law,
On behalf of the Defendant.

KRISTEN M. PARRILLI, CSR, RPR
Official Court Reporter
Criminal Division
CSR: #084-004723

# I N D E X

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(cont.)

I N D E X
(cont.)

THE CLERK: Sheet 1, Jason Van Dyke.
THE SHERIFF: Coming out.
THE COURT: Good morning. All right. Will the attorneys state their names and what side they represent?
MR. McMAHON: Good morning, Judge. Joe McMahon, Special Prosecutor and Kane County State's Attorney, for the People of the State of Illinois.
MS. HITE ROSS: Marilyn Hite Ross for the People.
MR. CULLEN: Joe Cullen on behalf of the State.
MS. GLEASON: Jody Gleason on behalf of the State.
MR. WEILER: Dan Weiler for the State.
MR. HERBERT: And good morning. Dan Herbert on behalf of Jason Van Dyke.
MS. WENDT: Tammy Wendt for Mr. Van Dyke.
MR. O'BRIEN: Darren O'Brien for Mr. Van Dyke.
MS. BLAGG: Jennifer Blagg for Mr. Van Dyke.
THE COURT: All right. Let me explain what's going to happen this morning. First off, there are -- we have extended media coverage in this case. What we're going to do is there are different witnesses that are wanting to testify or be called to testify in this case. They have filed objections to being audioed and also being videoed. We're going to hear those

objections first.

Then what we'll do is we'll come out and we'll start with -- I'm going to bifurcate the sentencing because there's unique issues involved in this. The first part of the sentencing will be the legal arguments concerning the issue, and the issue is easy -- the issue is easy to state, is that in all cases is aggravated battery a more serious crime than in all cases concerning second degree murder? So we'll have the legal arguments on that.

Then we'll have a short recess and then we'll go into the sentencing part of -- the second part of the sentencing phase which will be the aggravation phase by the State and the mitigation stage by the Defense.

And then we'll have closing arguments concerning the points of view and their presentations. All right. But we will have closing arguments on the legal issues involved right after the presentation concerning the law part of the sentencing. All right. There will be a short recess at this time.

(A short recess was had.)

(The following proceedings were had in chambers:)

to be audioed but not videoed.

MS. WENDT: Thank you, your Honor.

THE COURT: All right.

MS. WENDT: That's it.

THE COURT: Then here's what we're going to do: We'll bring everybody out and then in about five minutes I'll come out. We'll start the legal arguments on this case.

(A short recess was had.)

(The following proceedings were had in open court:)

THE COURT: All right. Court's back in session. Please remain seated.

All right. At this stage we're going to have the legal presentation concerning which is the most --

THE SHERIFF: Judge, we have to bring Mr. Van Dyke out.

THE COURT: Okay. What I want our wonderful cameraman to do, I want you to pan the audience right now. And this is an HD television; is that correct?

UNIDENTIFIED CAMERAMAN: Yes, sir.

THE COURT: Thank you.

Ladies and gentlemen, the reason for this is you've been fantastic throughout the trial. There's

been some exceptions over the several years that this trial has been going on, but the exception proves the rule. Everybody has been acting fantastic here. The press has been great. The media's been great. So -- And the people that are here, concerned -- Laquan McDonald's family members and loved ones, Mr. Van Dyke's family and loved ones in support, everybody has been fantastic. So just as, again, a matter of quality control, the reason why we're taking all the photos, if there is a disruption, your photograph is here or your video is here and if there is a disruption, you will go to jail, all right, if you cause it.

All right. At this time, are both sides ready?

MR. McMAHON: Yes, Judge.

MR. O'BRIEN: Yes.

THE COURT: Mr. McMahon?

MR. McMAHON: Thank you, Judge.

Counsel.

Your Honor, there are three prime- -- There are primarily three areas that you should look at when you're determining the possible sentence in this case. First, obviously, is the jury's verdict, second is the

Criminal Code of Corrections, but third, importantly, and I'll address this here in a moment, is the indictment. All of these things, all of these three areas need to be considered, giving your experience and the precedent and the direction that we have from both the Appellate and the Supreme Court.

I talk about the indictment because the indictment sets forth not just the allegations but the intent as reflected in the murder counts and the 16 separate counts of aggravated battery with a firearm and official misconduct and how we then presented the evidence and proved those counts beyond a reasonable doubt.

We presented that evidence through detailed trial testimony. I want to talk about three particular areas. First was the video evidence that showed 16 separate and distinct acts committed by the defendant. It was very clear. There were -- There were video evidence that was highlighted. It was broken down. It was slowed down that showed and convinced the jury beyond a reasonable doubt that there were 16 separate acts committed by the defendant.

But then when you couple that with Dr. Arunkumar's testimony and how detailed and thorough

that was, how there were 16 separate gunshot wounds, each one causing harm to the body of Laquan McDonald.

And then, importantly, through the cross-examination of the defendant, that there were 16 separate and distinct acts where the defendant testified and revealed on cross-examination that he fired his gun 16 times as he assessed and shot, assessed and shot. And he continued to assess and shoot that gun throughout the entire process. And he continued to shoot, striking the body. He changed his focus to the knife, according to his testimony, and he continued to do that until his gun was empty.

The second factor that I pointed out, Judge, is of course the verdict. The verdict is second degree murder, plus 16 separate verdict forms signed by every member of the jury and foreman -- foreperson as it related to the counts, the individual counts of aggravated battery with a firearm.

And then third, of course, and you know this, and I'm not going to spend a lot of time on this, the code of corrections, the statutory factors in aggravation. But you also look at the code on sentencing and correction to determine the possibility of potential sentences. What is the more serious

offense; is it the Class X aggravated battery with a the firearm or is it the second degree murder?

And at first blush to somebody who does not necessarily work in the system, when you hear the term "second degree murder," it sounds like a more serious offense. But under the laws of this state, under the sentencing code, under the decisions of both the Appellate and the Supreme Court in our state, aggravated battery with a firearm is a more serious offense and the Illinois Supreme Court has given us direction on how sentences should and must be imposed when there is a verdict on both aggravated battery with a firearm and second degree murder.

We lay out this argument in the brief that we filed earlier this week. There's just a couple of cases that I want to highlight in that brief, Judge. The first is the Bishop case. That's on page 3. It starts at paragraph 8 of our brief. And in People versus Bishop, the Illinois Supreme Court reiterated that multiple convictions are proper where the State consistently treats the defendant's acts as separate in the indictment and at the trial.

And so when this case was presented to the Grand Jury and the Grand Jury returned an indictment,

the indictment that we proceeded to trial on, there were 16 separate counts. And we in detail, sometimes painstakingly, and it was uncomfortable to hear some of the detail about the damage and the injury that the gunshot wounds caused to Laquan McDonald, but that theory was put before the Grand Jury, that theory never changed, and it continued through opening statement, through the presentation of our case, through our closing argument. And that was responded to from the jury that those allegations were proven beyond a reasonable doubt.

Once you resolve that issue, I think the Supreme Court has told us in Bishop -- and I think the Supreme Court has told us, as I just said, in Bishop how that case has to be resolved. You then have to resolve the issue of whether or not you sentence the defendant on the less serious charge of second degree murder. And, again, the Illinois Supreme Court as addressed that issue for us. And they've done that in the Lee cases.

Now, the Lee case, People versus Lee, which again is cited in our memorandum -- it starts on page 4, paragraph 10 -- but the Lee case worked its way through the --

THE COURT: And that's a 2004 case; is that --

MR. McMAHON: It is. Yes, sir.

THE COURT: Thank you very much.

MR. McMAHON: And it worked its way through both the Appellate Court. There was a supervisory order issued by the Supreme Court that sent the case back to the Appellate Court and then it came back.

But as the Supreme Court in its decision in People versus Lee said, this Court must sentence the defendant, Jason Van Dyke, on the more serious charge, which they reiterated in that decision, they set out in the Bishop decision that the more serious charge in this case is the Class X aggravated battery with a firearm.

Now, let me talk about sentencing on the legal issues just on sentencing on aggravated battery with a firearm, Judge. And as you know well enough, for each count of aggravated battery with a firearm where you find that the battery caused severe bodily injury, the sentence for each count shall run consecutive. Now let me be clear on this point. The sentences for aggravated battery with a firearm, if you find severe bodily injury from each count, those sentences must run consecutive. If you impose -- And

I'm going to ask you to impose a sentence on second degree murder as well, and I'll finish up with that, but any sentence that you impose on second degree murder may run concurrently with any sentence that you impose on aggravated battery with a firearm.

So let's -- let me get back to the aggravated battery with a firearm. The testimony of Dr. Arunkumar was crystal clear and more than persuasive. It really eliminated beyond all doubt about the injuries that those gunshots caused. But the Supreme Court has told us, they have told you and every court in the state that the trial judge is in the best decision -- in the best position to make that determination. And not every gunshot that strikes a human being equates to severe bodily injury.

We set out kind of a survey of some of the cases we were able to find that found severe bodily injury and gunshot wounds that struck a human being that did not cause severe bodily injury. My point, Judge, is that you're in the best position to make that, given not only your position here in this case but your experience hearing cases. And your decision, according to the Illinois Supreme Court, is entitled to and will be given -- and should be given great

deference, to quote the Illinois Supreme Court.

I'm not going to belabor the testimony of Dr. Arunkumar or what the injuries were. Again, I think that testimony was crystal clear during the trial. But there is ample evidence for you to make a finding of severe bodily injury on one count, on two counts, whether that's three counts, or all 16, anywhere in that range.

But let me talk about one of the defendant's own witnesses, Dr. Teas. Her testimony -- Their own expert testified that at least two of the gunshots caused severe bodily injury and that those were the only two gunshots that were fatal. So if you accept that testimony for purposes of sentencing, and if you resolve that one issue in favor of the defendant, then the minimum sentence is 12 years, plus the nontriggering offense, for a minimum of 18 years in the Illinois Department of Corrections. If you find that all 16 counts caused severe bodily injury, as we've discussed at -- as we have set forth in our legal memorandum, then the minimum on this case is as high as 96 years.

And now we have another issue to resolve that you have to consider. You have to consider a

constitutional issue as it relates to proportionate penalties. We charged -- The State charged Jason Van Dyke with first degree murder. Had that case -- Had the jury returned a verdict on first degree murder, as you -- as we all know in this courtroom, the minimum sentence would have been 14 years. A sentence of 96 years, more than twice the minimum --

THE COURT: I'm sorry, the minimum sentence would have been what, Mr. McMahon?

MR. McMAHON: 45 years.

THE COURT: 45. Thank you.

MR. McMAHON: If you find all 16 counts must be consecutive, then the minimum sentence is 96 years for the aggravated battery with a firearm. That's more than two times the minimum sentence for first degree murder. And I think that raises constitutional issues about proportionate penalties, your Honor. And so that is a factor, whatever your decision is. And you know this, Judge, that you have to take into account and address that issue.

I'm asking you -- I'm going to be asking you, after we hear aggravation and mitigation, for you to impose a sentence on both the aggravated battery with a firearm and the second degree murder and here's why:

Again, the Illinois Supreme Court in the Lee decision but also the Crespo, C-R-E-S-P-O, that was a -- I believe it was a 2003 decision, Judge. I think I'm misquoting that, but we've cited that citation --

THE COURT: Is that the stabbing case?

MR. McMAHON: That is the stabbing case, yes, sir. Multiple stab wounds to a child and both armed violence and an aggravated battery and attempt murder in that case. Unlike the Crespo case, and unlike the Lee case, we did separate out the individual counts. We did present evidence on all 16 counts. But when you look at all of the evidence, there is sufficient evidence for you to impose a sentence on both second degree murder and the aggravated battery with a firearm.

We've raised the issues about judicial economy, about imposing -- You've heard all of the evidence about imposing a sentence on both aggravated battery with a firearm and the second degree murder. The Illinois Supreme Court has said very clearly that aggravated battery is a more serious offense. You must, according to Supreme Court, impose a sentence on those counts. But there is sufficient evidence and there is ample legal reason for you to impose a concurrent sentence on the second degree murder. And

after we hear aggravation, mitigation, we'll ask you to impose a sentence on both.

THE COURT: Thank you very much, Mr. McMahon.

Mr. O'Brien?

MR. O'BRIEN: Thank you.

Judge, the one act, one crime rule or doctrine of merger in Illinois applies in this case. In fact, the State has argued in motions during this case that the aggravated batteries are lesser includeds of the murder, and in fact they are. As a result of that, and the fact that all of the wounds that comprise the aggravated battery were death-causing wounds, the aggravated battery is a lesser included of the second degree and first degree murder that had to be reached by the jury before reaching second degree murder.

Now, the State has cited several cases including the Illinois Supreme Court and other highly-regarded sources that individual wounds can be treated at individual crimes, and they can, but just not in this case. In Crespo it was three stab wounds to the thigh, but that victim lived so there was no what I would say is greater crime that occurred here. So that can be -- could be three attempt murders, three aggravated batteries, whatever it was, but that

can't -- that does not apply and cannot apply when the aggravated batteries are lesser includeds of the murder.

In this case, another way to look at it is it is impo- -- was impossible to commit the murder without committing the aggravated batteries in this case, where all the aggravated battery injuries were death-causing wounds, according to the State's expert. Defendant cannot be sentenced on both offenses. The merger doctrine applies. So the question is what merges into what? The commonsense answer to that would be the lesser harm merges into the greater harm. The woundings merge into the death. There are cases that suggest maybe it goes the other way. But there are several reasons to -- Or at least one case, Lee I'm talking about, which Mr. McMahon mentioned. But it must merge into second degree for several different reasons.

Number one, if you merge into the aggravated battery, it effectively eliminates second degree as a crime in Illinois. Let me explain that. A defendant -- Any defendant prosecuted for first degree murder, if the State chooses to hedge their bets and also charge a Class X aggravated battery with a firearm

or an attempt murder, which is a Class X, both those Class Xs would merge into a finding of first degree. Nobody in this courtroom -- I doubt anybody in this courtroom would argue with that point. So if the finding is first degree, the agg bat or the attempt murder merges into the first degree. That -- That same position applies to second degree murder.

Essentially, though, what you would have in every case where this -- where the prosecution chose to charge the case in the manner as described and as they did here, second degree is off the table. Even though the Legislature enacted second degree murder, no one would ever be convicted and have judgment entered or be sentenced upon it if you merge this into the aggravated battery.

The State relies a lot on Lee. And at first glance that seems to be an on-point type case, but it's not. It's distinguishable for a couple different reasons. First look at the opinion itself; it's based on another opinion from the '60s. But within that Lee opinion, there is a dissent. One of the justices dissented with the majority's analysis, debating the method with which they analyzed what's the higher class and what's the lower class.

But the main reason it's distinguishable is because the Lee court was never asked to look at that second degree argument that I just mentioned. They were never asked to consider whether or not the elimination of second degree murder thereby mer- -- when the second degree merged into the aggravated battery, whether that was proper or not. That makes Lee distinguishable. But luckily we do have guidance from both the Illinois Supreme Court and Illinois Appellate Court as to whether or not by virtue of the way they charged the case the State can eliminate second degree, which has happened here.

And I've cited in our memo also -- which I'll adopt for purposes of this argument anything I don't talk about, I'll ask you to consider that -- there are cases, Drakeford and Morgan, Illinois Supreme Court cases that said you can't do that. You cannot charge a case in a way that eliminates second degree murder.

There are Appellate Court cases. The most recent one that I found, Space, was a 2018 case, there's Rosenthal, 2008, all of which say the State cannot charge a case in a way that eliminates second degree murder. The -- In fact, in doing so, they make second degree murder a nullity.

So how does it merge, then? The reason the cases merge is based upon what I said, how it merges. As you know, and as everybody knows in this courtroom, before a defendant can be found guilty of second degree murder, the trier of fact, in this case the jury, has to conclude that the elements of first degree murder have been met. It's at that moment that the merger occurs. Because even if they later determine there are mitigating factors, as they did here, the -- it does not change the fact that the elements of first degree murder were reached before consideration of the mitigating factors. Once that happens, the aggravated battery merges into the murder counts.

Additionally, if you merge it the other way, you eliminate or negate the jury's deliberations. They were out for a while on this case. They put a lot of thought into this. They decided what the elements were and they decided there are mitigating factors in the evidence here that allowed them to reduce first degree to second degree. If you merge this into the aggravated battery, their deliberations are out the window. As a result, Mr. Van Dyke must be sentenced to second degree, in our opinion.

If, however, you think otherwise and you

merge it the other way, the State has talked about in their memo and orally right now that they believe some of these counts should be consecutive. It's true there's a section of the statute, 584, that says that if there's multiple injuries and severe bodily injury occurs during those injuries to the victim of the injuries, that's a triggering offense for mandatory consecutive. But in this case those aren't the injuries. You have a case here where every one of those wounds that are the subject of the aggravated battery caused death. Death is the injury in this case, not the individual aggravated batteries.

Thinking about it, it would be extremely unfair to punish Mr. Van Dyke for shooting and wounding somebody, and then having those same wounds be the cause of death and you punish him for death, too. That is -- that is exactly why the merger doctrine exists and that is why he must be sentenced as to only one count. And in this particular case, because if you choose to merge into the aggravated battery, the -- it's the Defense position that you can sentence him to one count, six to 30 years, because death is the injury and so therefore there's nothing to be consecutive to.

I also agree with Mr. McMahon that gives

proportionate penalties issues here. The fact that the minimum for the aggravated batteries could be as high as 96 years and the maximum for second degree murder is 20 leaves a difference of 76 years. We agree that that would be -- there would be a proportionate penalty argument under those circumstances. In this case, however, Lee is not controlling and we're asking that the Court sentence the defendant on second degree.

THE COURT: Mr. McMahon, anything else?

MR. McMAHON: No, Judge.

THE COURT: Thank you very much.

Ladies and gentlemen, as I had said earlier, we're going to take a recess and then we're going to go into the other phase of the sentencing which will be the -- State will present aggravation and aggravation witnesses, the Defense will present mitigation and mitigation witnesses.

Do we have the interpreter here yet, Mr. McMahon? Okay. We'll adjust.

MR. McMAHON: She's on her way, Judge. And we have other witnesses to go before she arrives.

THE COURT: Thank you very much. There will be a recess at this time.

(A short recess was had.)

do you want to go in the lockup?

THE DEFENDANT: I can stay out here, sir.

THE COURT: Certainly. You can stay out here then.

All right. There will be a short recess and I will be back to render my decisions.

(A short recess was had.)

THE COURT: All right. Court's back in session. Please remain seated.

All right. Again, I'm going to direct our wonderful cameraman from WGN to pan the audience and -- Go ahead and do that.

All right. So your images are going to be captured on this TV camera. All right? Again, you have been wonderful. There have been some exception throughout the several years that this case has been on my call, and the exception proves the rule. Everybody here has been outstanding. There's a lot of emotion involved, and I understand that on both the -- Laquan McDonald's family and his loved ones and Jason Van Dyke and his family and his supporters and the independent people out there. Some call themselves demonstrators, some call them protesters, but these are concerned sentence and they have a constitutional right to be

here. All right? But there is no constitutional right to disrupt the Court and affect administration of justice.

So let me tell you exactly how I feel. I feel so proud of you. You've been the example for -- not only our city and our county and our state, but this is going nationally on TV. So we will let them see how outstanding individual citizens of this state, of this county, and of this city are, that no matter what the verdict is -- and I assume that 100 percent of everybody's going to be disappointed, so -- And that's my job and I accept it willingly, so thank you.

All right. To begin, first of all, we're going to have to go back to when the jury was instructed to get a little insight into this process and into the reasoning for my rulings. Starting off first, the jury was instructed on first degree murder. And the beginning of the instruction was, To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First proposition: That the defendant performed acts which caused the death of Laquan McDonald; and

That the -- when the defendant did so, he intended to kill or do great bodily harm to Laquan McDonald; or he knew that such acts would cause death to Laquan McDonald; or he knew that such acts created a strong probability of death or great bodily harm to Laquan McDonald; and

Third proposition: That the defendant was not justified in using the force.

Then the next operative paragraph is, You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved the above propositions beyond a reasonable doubt.

What that means is, first of all, there has to be proof beyond a reasonable doubt that first degree murder was committed. That is the foundation that second degree murder consideration has to be laid on. We're not moving anyplace until the jury came back with the jury -- with the decision that each and every element of first degree murder has been proven.

Then, according to Professor Kli- -- Richard Kling, instead of the common definition of a lesser offense, second degree murder is first degree murder, which is the superior charge, plus mitigating factors.

So the common definition of a lesser offense is that it requires less proof. In this case -- and the Supreme Court and the state Legislature has the right to use what nomenclature they want -- they consider second degree murder a lesser offense.

So this is where we have to get before we start analyzing the different propositions. But, again, you have to understand that to get to the second degree murder consideration, which the jury did and came back with a verdict of second degree murder, the condition precedent to even consider the issues are that there has been a finding of first degree murder, and each and every element of that finding had to be proved beyond a reasonable doubt.

Now moving on. People versus Lee which, is an Illinois Supreme Court, has been quoted quite a bit and it is a very instructive case concerning second degree murder and also aggravated battery charge with a firearm.

Justice Robert -- Excuse me. Justice Thomas in that case out of the Supreme Court framed the issue which I think is important here in that are all aggravated battery with a firearm cases or crimes more serious than the offense of all second degree murder

cases as a matter of law? He analyzed the different elements of aggravated battery with a firearm and also the elements of second degree murder concerning penalties. And if you look, it's -- we use a common nomenclature that second degree murder is a Class 1 felony. Actually, it is a Super Class 1 felony.

The state Legislature decided to increase the penalty on second degree murder by 33 percent. Instead of four years to 15 years in the State penitentiary with two years mandatory supervised release, they increased it to four to 20 years in the State penitentiary, along with the other provisions of probation, et cetera.

But looking at that, and then Justice Thomas's analysis of the penalties, they -- his findings were that they overlap because you have the four to 20 and you have the six to 30, so that would lead to the conclusion or to support the conclusion that you have to analyze these cases on a particular case-by-case bases and the facts in each individual case controls. And to analyze those facts and to compare which is the more serious offense -- and these are case specific-decisions, no general proposition is being issued from this Court, this only applies to the

case of the murder of Laquan McDonald.

So you have to look at the sentences. And once there is this overlapping, we don't have a computer to do that. We have to have a trial judge to look at that to determine which would be the more appropriate sentence for aggravated battery with a firearm or second degree murder.

Back in 1987, our state Legislature enacted the crime of second degree murder. Two years later -- Well, it was July, a little bit more than two years later, they enacted the crime of aggravated battery with a firearm. At that time we have to presume and certainly our state Legislature knew the difference between these two crimes. And, certainly, the aggravated battery with a firearm came in 1989.

If they wanted to eliminate, and they certainly had the power to, they could say, In cases where there's a finding of both second degree murder and aggravated battery with a firearm, there is no second degree murder and the accused or convicted -- convicted must be sentenced on the aggravated battery with a firearm.

Just to take a couple examples, if someone was shot in the baby finger by a firearm unjustly and

all the elements of aggravated battery with a firearm were there, that would be the crime of aggravated battery with a firearm. Again, if somebody was shot in the baby toe by a firearm unjustly and all the elements of aggravated battery with a firearm have been proven, those are aggravated battery with a firearm cases.

The thing to evaluate, and especially case-specific is here. Is it for serious for Laquan McDonald to be shot by a firearm or is it more serious for Laquan McDonald to be murdered by a firearm? Commonsense comes to an easy answer on that in this specific case.

Therefore, my findings are that I will sentence Mr. Van Dyke on the second degree murder count. Again, applying Justice Thomas's reasoning, I find that the lesser offense in this particular case and set of facts is the aggravated battery with a firearm.

Just as an aside, all those shots were done within a range of anyplace from 14 to so many seconds, but less than 30 seconds, at the most, so I consider that one act, so they would all merge. But I'm not going to enter judgment on that as Illinois requires that with one act, one sentence, one crime. So,

therefore, there will be no judgment entered in on the aggravated battery with a firearm counts and they will merge. I'll enter judgment on the second degree murder count.

Now, again, anytime it gets easy for a human being to sentence another human being, that human being, whether it's a judge, or if determining in a death penalty case a jury, they should get out of the business. All right? So this is not pleasant and this is not easy, but this is some kind of a profession that I chose and I'm not complaining about it. But I certainly have to take into consideration all the feelings that are involved here today and during -- throughout the whole trial.

And I want to compliment the lawyers here. Just -- I don't have the exact figures, but initially the amount of information that they had was 500,000 E-mails, maybe more, and 100,000 pages of discovery. Laquan's DCF files were in the neighborhood of about 8,700. You people that have been here, you wonderful people during the trial know the expert witnesses, the reports that have been filed, the motions that have been filed. So both sides have done such a tremendous amount of work and they're very professional and I want

to compliment them.

Now, moving on. You've been here today and you've seen the impact that this sentence -- I mean this crime has had on Laquan McDonald and his family. You've seen the impact on the Van Dykes and their family and the children. That's the shame. The families are suffering a tremendous amount of pain during this, along with Laquan McDonald's family and loved ones.

And I've sat here time and time again, and along with my brother judges that are here in this courtroom, and it's just so senseless that these acts occur because you can see the pain on both sides of the family. And I think Mr. McMahon said it in closing arguments in the case in chief. This is a tragedy for both sides. So this is not easy and I don't expect it to be easy.

I -- My findings are an appropriate sentence would be 81 months in the Illinois Department of Corrections, two years mandatory supervised release.

Mr. Van Dyke, you have two rights I have to inform you of. One -- The first right is you have a right to have me reconsider your sentence. That means, within 30 days, you'd have to file a written document

called a motion to reconsider. In that written document, it must contain all the reasons why you want me to reconsider your sentence. If you could not afford an attorney for that motion and you wanted to have one in preparation of it, the State would pay for that attorney.

Do you understand that right? You have to answer yes or no or --

THE DEFENDANT: Yes, sir.

THE COURT: -- you don't know.

Okay. The next right is you have the right to appeal both the trial and the sentencing. And, again, within 30 days, you'd have to file a different written document and that document is called a notice of appeal. If you could not afford the appeal, the State would pay for your lawyer, would pay for your transcripts, and all filing fees if you couldn't afford your appeal.

Do you understand that right also?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you.

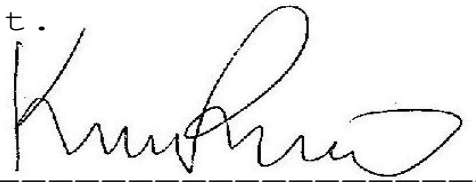
All right. There will be a short re- -- Well, that's the end of it. Court's in recess.

(Which were all the proceedings had the above-entitled cause.)

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, Kristen M. Parrilli, an Official Court Reporter for the Circuit Court of Cook County, Illinois, Judicial Circuit of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into computer-aided transcription, which I hereby certify to be a true and accurate transcript of the proceedings had before the HONORABLE VINCENT M. GAUGHAN, Judge of said court.



KRISTEN M. PARRILLI, CSR, RPR
CSR No. 084-004723
Official Court Reporter
Circuit Court of Cook County
County Department
Criminal Division

Dated this 23rd day
of January, A.D., 2019

| Sheet # | Defendant Sheet # | CRIMINAL DISPOSITION SHEET | Branch/Room/Location | CLERK USE ONLY |
|---|---|---|---|---|
| 0001 | 0001 OF 0003 | | 1728 500<br>000 UNKNOWN AGENCY REFERRING | 0001 |

| CASE NUMBER | DEFENDANT NAME | ATTORNEY | COURT DATE | COURT CALL/TIME |
|---|---|---|---|---|
| 17CR0428601 | VAN DYKE, JASON D | HERBERT DANIEL Q | 01-18-2019 | 1-0900 AM |

| CB/DCN # | IR # | EM | BOND # | I | C | D | BOND AMOUNT |
|---|---|---|---|---|---|---|---|
| | | | 0000000 | | | X | $0.00 |

| CHARGES | * IN CUSTODY 12/14/18* | COURT ORDER ENTERED | CODES |
|---|---|---|---|
| C001 720-5/9-1(A)(1) MURDER/INTENT TO KILL/INJ 09/17/18 NOLLE PROSEQUI | | | |
| C002 720-5/9-1(A)(2) MURDER/STRONG PROB KILL/I 09/17/18 NOLLE PROSEQUI | | | |
| C003 720-5/9-1(A)(1) MURDER/INTENT TO KILL/INJ 09/17/18 NOLLE PROSEQUI | | | |
| C004 720-5/9-1(A)(2) MURDER/STRONG PROB KILL/I 09/17/18 NOLLE PROSEQUI | | | |
| C005 720-5/9-2 2ND DEGREE MURDER 10/05/18 VERDICT OF GUILTY | | | |
| C006 720-5/9-1(A)(2) MURDER/STRONG PROB KILL/I 10/05/18 MERGED BY TRIER OF FACT | | | |
| C007 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR 10/05/18 VERDICT OF GUILTY | | | |
| C008 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR 10/05/18 VERDICT OF GUILTY | | | |
| C009 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR 10/05/18 VERDICT OF GUILTY | | | |
| C010 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR 10/05/18 VERDICT OF GUILTY | | | |
| C011 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR 10/05/18 VERDICT OF GUILTY | | | |

Sentencing

MTRC Judgment On 2ND Degree Murder
Agg Battery W/Firearm Counts Merge

No Judgment On
Merged Agg Battery W/Firearm Counts

61 Mon IDOC - 2yr MSR
Credit For 115 Days

Mittimus To Issue

| JUDGE: | JUDGE'S No. | RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK: | VERIFIED BY: |
|---|---|---|---|
| VINCENT M. GAUGHAN | 1553 | | |

SR250

124535

| Sheet # | Defendant Sheet # | CRIMINAL DISPOSITION SHEET | Branch/Room/Location | CLERK USE ONLY |
|---|---|---|---|---|
| 0002 | 0002 OF 0003 | | 1728 500<br>000 UNKNOWN AGENCY REFERRING | 0001 |

| CASE NUMBER | DEFENDANT NAME | ATTORNEY | COURT DATE | COURT CALL/TIME |
|---|---|---|---|---|
| 17CR0428601 | VAN DYKE, JASON D | HERBERT DANIEL Q | 01-18-2019 | 1-0900 AM |

| CB/DCN # | IR # | EM | BOND # | I | C | D | BOND AMOUNT |
|---|---|---|---|---|---|---|---|
| | | | 0000000 | | | X | $0.00 |

| CHARGES | * IN CUSTODY 12/14/18* | COURT ORDER ENTERED | CODES |
|---|---|---|---|
| C012 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | See Page (Previous Court Sheet | |
| C013 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C014 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C015 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C016 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C017 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C018 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C019 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C020 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C021 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |
| C022 720-5/12-3.05(E)(1) AGG BATTERY/DISCHARGE FIR<br>10/05/18 VERDICT OF GUILTY | | | |

| JUDGE: | JUDGE'S No. | RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK: | VERIFIED BY: |
|---|---|---|---|
| VINCENT M. GAUGHAN | 1553 | | |

# CRIMINAL DISPOSITION SHEET

| Sheet # | Defendant Sheet # | Branch/Room/Location | CLERK USE ONLY |
|---|---|---|---|
| 0003 | 0003 OF 0003 | 1728 500<br>000 UNKNOWN AGENCY REFERRING | 000 |

| CASE NUMBER | DEFENDANT NAME | ATTORNEY | COURT DATE | COURT CALL/TIME |
|---|---|---|---|---|
| 17CR0428601 | VAN DYKE, JASON D | HERBERT DANIEL Q | 01-18-2019 | 1-0900 AM |

| CB/DCN # | IR # | EM | BOND # | I | C | D | BOND AMOUNT |
|---|---|---|---|---|---|---|---|
| | | | 0000000 | | | X | $0.00 |

| CHARGES | * IN CUSTODY 12/14/18* | COURT ORDER ENTERED | CODES |
|---|---|---|---|
| C023 720-5/33-3(B)<br>OFFL MISCONDUCT/FORBIDDEN<br>10/05/18 VERDICT OF NOT GUILTY | | See Previous Page (Court Sheet) | |

| JUDGE: | JUDGE'S No. | RESPONSIBLE FOR CODING AND COMPLETION BY DEPUTY CLERK: | VERIFIED BY: |
|---|---|---|---|
| VINCENT M. GAUGHAN | 1553 | | |

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS )
V. )
JASON D VAN DYKE )
Defendant

CASE NUMBER 17CR0428601
DATE OF BIRTH 03/31/78
DATE OF ARREST 00/00/00
IR NUMBER _____ SID NUMBER _____

# ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

| Count | Statutory Citation | Offense | Sentence | Class |
|---|---|---|---|---|
| 005 | 720-5/9-2 | 2ND DEGREE MURDER | YRS. 000 MOS. 81 | 1 |
| | and said sentence shall run concurrent with count(s) ___ ___ ___ ___ | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ____ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ____ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ____ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |
| ____ | _____ | _____ | YRS. ____ MOS. ____ | ____ |
| | and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on: | | | |

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0115 days as of the date of this order Defendant is ordered to serve 0002 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____ _____ _____ _____
AND: consecutive to the sentence imposed under case number(s) _____ _____ _____ _____

IT IS FURTHER ORDERED THAT _____

ENTERED
JUDGE VINCENT GAUGHAN-1553
JAN 18 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law, the above sentence is fulfilled.

DATED JANUARY 18, 2019
CERTIFIED BY A MISTER
DEPUTY CLERK
VERIFIED BY _____

ENTER: 01/18/19
JUDGE: GAUGHAN, VINCENT 1553

REPRINT 01/18/19 GCPL CCG N305

SR253